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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1926

No. 306

CORNELIUS ANDERSON, SUING ON BEHALF OF HIMSELF AND ALL OTHER SEAMEN, ETC., PETITIONER,

vs.

SHIPOWNERS ASSOCIATION OF THE PACIFIC COAST, PACIFIC AMERICAN STEAMSHIP ASSOCIATION, THEIR MEMBERS, ETC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 1, 1926

CERTIORARI GRANTED APRIL 19, 1926

(31,735)

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INDEX

	Page
Record from the district court of the United States, northern district of California	1
Bill of complaint	2
Motion to dismiss	18
Opinion, Partridge, J.	21
Order granting motion to dismiss	22
Final decree	22
Assignments of error	22
Petition for and order allowing appeal	29
Bond on appeal	31
Praecipe for transcript of record	31

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	Page
Clerk's certificate	32
Citation	32
Designation of parts of record to be printed	34
Proceedings in the United States circuit court of appeals, ninth circuit	39
Order denying petition for certiorari, United States Supreme Court	39
Argument and submission	41
Order to file opinion and decree	42
Opinion, McCamant, J.	43
Decree	47
Clerk's certificate	48
Order allowing certiorari	50

NAMES AND ADDRESSES OF ATTORNEYS OF RECORD.

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Attorneys for Appellees.

In the Southern Division of the District Court of the United States in and for the Northern District of California, Third Division.

IN EQUITY—(No. 1486).

CORNELIUS ANDERSON, Suing on Behalf of Himself and All Other Seamen Employed in Interstate and Foreign Commerce by Sea on Vessels Flying the Flag of and Engaged in the Merchant Service of the United States of America and Sailing to and from Ports on the Pacific Coast of the said United States,

Plaintiff,

vs.

SHIPOWNERS ASSOCIATION OF THE PACIFIC COAST, PACIFIC AMERICAN STEAMSHIP ASSOCIATION, Their Members, Associates, Agents and Servants, JOHN DOE and RICHARD ROE,

Defendants.

(COMPLAINT FOR AN INJUNCTION, ETC.)

Plaintiff complains of the defendants and for cause of action alleges:

I.

That plaintiff is a resident of the City and County of San Francisco, State of California, was born in the Kingdom of Norway, and more than four years ago he declared his intentions of becoming a citizen of the United States of America, and for more than twenty years last past he has been employed as a seaman, in the capacity of sailor in working on American merchant vessels that carried passengers and cargo between different ports in the several states of the Pacific Coast of the United States of America, and also between such ports and Atlantic and foreign ports and is desirous of continuing in such employment.

II.

That plaintiff is associated by and through an unincorporated association of persons called the International Seamen's Union of America, with about ten thousand other seamen, working as seamen on vessels engaged as in paragraph I hereof and hereinafter stated, in the capacity of oilers, sailors, water-tenders, cooks, firemen, quartermasters, winch-drivers, stewards, seamen and in other capacities, and their number being so large as aforesaid, it is impossible to unite all of such persons so employed with plaintiff as plaintiffs in

this action and [1*] complaint, and plaintiff brings this action on his own behalf, and on behalf of all seamen affected by the acts herein complained of, such acts being matters of common and general interest among all such seamen, and it is further impracticable to unite all such seamen as plaintiffs in one action, and for that reason also, and also to prevent a multiplicity of actions, plaintiff brings this action on his own behalf and on behalf of all such seamen.

III.

That defendant, Shipowners Association of the Pacific Coast, is a membership corporation, organized and existing under and by virtue of the laws of the State of California, with its office and principal place of business in the City and County of San Francisco, State of California, and its membership now, and at the times herein mentioned, was and is substantially every person, firm, corporation or association of persons, owning or operating, or acting as managing owner of every vessel engaged in interstate and/or foreign commerce documented in the different offices of United States Collectors Of Customs on the Pacific Coast of the United States of America.

IV.

That defendant, Pacific American Steamship Association, is, and at the times above mentioned was, a voluntary unincorporated association of persons that owned, operated or controlled, or now own, operate and control, every merchant vessel

*Page-number appearing at foot of page of original certified Transcript of Record.

flying the flag of and engaged in the merchant service of the United States of America, between Pacific coast ports of said United States and foreign and Atlantic ports, and at said times it had, and now has its office and principal place of business in the said City and County of San Francisco, State of California.

V.

That collectively, the members of the said Shipowners Association of the Pacific Coast, and the said Pacific American Steamship Association, own, operate, or control, and also did so at said times, every vessel flying the flag of and engaged in the merchant service of the United States of America, in carrying passengers and cargo between the [2] several ports of the Pacific coast of the said United States of America and such ports on the Atlantic coast of said United States of America and also foreign ports, and collectively employ all seamen so employed on such vessels.

VI.

That the true names of the defendants in the caption hereof named as John Doe and Richard Roe are unknown to the plaintiff and he therefore prays that when such true names are ascertained they may be inserted herein by amendment.

VII.

That on or about the 1st day of January, 1922, the defendants herein associated and combined together to restrain the freedom of plaintiff and all other seamen on the said Pacific Coast in engaging in commerce between the several states on the

Pacific coast aforesaid and said states and states on the said Atlantic coast and also foreign ports and nations, all by sea, and to that end they established and now maintain offices in San Francisco and San Pedro in the State of California, at which offices almost all seamen who are employed on vessels engaged in the trade and commerce aforesaid are engaged and/or supplied by the defendants to the operators of such vessels so engaged in the trade and commerce aforesaid, the offices of the defendants in said San Francisco being located at number 330 Battery Street therein.

VIII.

That as a condition of being employed in such trade and commerce on vessels flying the American flag, the said defendants compel all seamen seeking such employment to register and take a number and take his turn for such employment according to such number, and no seaman can secure employment as aforesaid on the said Pacific coast unless he takes such number and his turn for employment according to such number, which frequently prevents seamen of good qualifications and well known from obtaining employment at once, when but for the actions of the defendants herein complained of those seamen well known by the master and other [3] officers on such vessels who prior to the actions of the defendants herein complained of invariably selected the seamen on such vessels, they would obtain work at once, and as a condition of obtaining such employment they also compel all seamen desiring to engage and be employed in the

trade and commerce aforesaid to take at a price of twenty-five cents for each book and carry such book upon which there is printed among other things the following:

"Employment Service Bureau,
Pacific American Steamship Association, Shipowners Assn. of the Pacific Coast, San Francisco, California.

This certificate and discharge is issued under the authority of the Pacific American Steamship Association and the Shipowners' Association of the Pacific Coast, and no person will be employed by these associations unless he is registered at their employment offices and has in his possession this Certificate and Discharge.

The lawful holder of this certificate will deliver it to the Master of the vessel when he signs Articles of Agreement, and the Master will retain the same in his possession until the seaman is discharged or has left the employment.

When the seaman severs his connection with the employment the Master will deliver this Certificate to the owner after he, or a person designated by him, has filled out in the proper columns the record of the seaman's service, and the reason of the discharge.

This Certificate is the personal record of the seaman and is the basis of his future employment; the seaman is therefore advised to keep the same carefully and to conduct himself so that his record will be found satisfactory for future service.

If this certificate is lost or stolen a duplicate will

be furnished upon proper presentation at the Employment Service bureau.

If this Certificate is found by any person the same should be returned to the Employment Service Bureau.

PACIFIC AMERICAN STEAMSHIP ASSOCIATION.

SHIPOWNERS ASSN. OF THE PACIFIC COAST.

By W. J. PETERSON,
General Manager. [4]

TO MASTERS.

When a seaman joins your vessel, he will have this book and a card assigning him to your vessel; take up this book and retain it until the seaman is discharged or quits the vessel. When the seaman is discharged or quits the employment make out a report in this book of his rating, conduct and efficiency and return the book to him. If the seaman deserts write a report of the facts in this book and return the same to the Employment Service Bureau.

TO SEAMAN.

When you receive this book you will be given a registered number which will be placed in the back of this book. When you leave your ship you must report to the Employment Service Bureau and get a new registered number. This registration number is given you when you apply for a job and has nothing to do with the number printed on the book." * * *

That in addition to the above book, which is

called a continuous discharge book, said defendants further require all seamen desiring to engage or be employed in the trade and commerce aforesaid to upon being designated for employment at the offices aforesaid to take a card in the words and figures following, to wit:

ASSIGNMENT CARD.

"Report to ———.

Applicant must report back to the above if he fails to get the job, San Francisco.

To Captain of S. S. (Name of Steam Vessel).

Lying at (Place where vessel is lying). In response to an order we are assigning (Name of person assigned) in the capacity of (Capacity here inserted).

Discharge Book No.———. Registration No. ———.

Monthly Wages

$———

EMPLOYMENT SERVICE BUREAU.
SHIPOWNERS ASS'N OF THE PACIFIC COAST,
PACIFIC AMERICAN STEAMSHIP ASS'N,
WATER FRONT EMPLOYERS UNION,
330 Battery St.

W. J. PETERSON,
General Manager.

See Other Side. [5]

The other side of said card reading as follows:

"FILL OUT AND RETURN TO THIS OFFICE WHEN SEAMAN IS DISCHARGED OR QUITS SHIP.

Date of Entry for pay ———. Place ———.
Date Discharged ———. Place ———.
REPORT ABILITY AND CONDUCT, WHETHER "POOR" "FAIR" "GOOD" OR "VERY GOOD"
"ABILITY" ———. "CONDUCT" ———.
Cause of Discharge ———————————
Remarks ———————————
Captain's signature ———————————

NOTICE—THIS CARD IS NOT TO BE GIVEN TO SEAMAN BUT TO BE DELIVERED OR MAILED DIRECT TO EMPLOYMENT SERVICE BUREAU.

That the blank spaces in the above and the following card are filled out at defendants' offices to meet the facts of each seaman's employment, and the above card is gray in color, and is the card designated "GREY IN COLOR" in the card hereinafter mentioned.

IX.

That in addition to the card and book hereinbefore mentioned, defendants also issue and use another card in connection with the employment of each man (seaman) in the trades and commerce aforesaid, the following being a copy of such card used for the engine department, and similar cards being used by them as aforesaid in the deck and stewards department which exist on each of the vessels aforesaid, to wit:

"Engine Dept. 5000 11–8–24

TO CAPTAINS OR OTHER EXECUTIVE OFFICERS:

Mr. ———————————

Is registered in the ENGINE DEPARTMENT.

As ———————————

BUT HE MUST NOT BE EMPLOYED ON YOUR SHIP IN ANY CAPACITY Unless he presents an Assignment Card, GREY IN COLOR, issued by us and addressed to your vessel designating the position to which we have assigned him.

NOT GOOD AFTER 2 MONTHS FROM DATE.

EMPLOYMENT SERVICE BUREAU
SHIPOWNERS ASS'N OF THE PACIFIC COAST,
PACIFIC AMERICAN STEAMSHIP ASS'N,
WATERFRONT EMPLOYERS UNION,
330 Battery Street, San Francisco.

Registration.

This space for number.

Discharge Book

This space for number of discharge book.

Here appears citizenship or alien age. [6]

That in addition to the foregoing each seaman applicant at said office for a position through said office in the trade and commerce aforesaid and receiving one of said books is required to have written thereon his place of birth, his age, his date of birth, his height, his weight, the color of his hair, the color of his eyes, his complexion, his rating, the total years of his sea experience, his previous em-

ployers, and his photograph is also required but not insisted on.

X.

That the said matters are regulations of commerce among the several states and with foreign nations, in violation of the provisions of Subdivision 3, of Section 8, of Article I of the Constitution of the United States, and have been fully provided for by the Congress of the United States in the act of Congress of June 7th, 1872, commonly called and known as the Shipping Commissioners Act and the various Acts of the said Congress amendatory and supplemental thereto, in so far as the judgment of said Congress deemed it necessary they should be provided for.

XI.

That the said regulations of commerce restrain seamen from freely engaging in the trade and commerce aforesaid including the plaintiff and no seaman on the Pacific coast aforesaid can get employment without obeying such rules and regulations, excepting only in very few instances, as the vessels under the control of defendants exceed in number 300 vessels and comprise nearly all of the vessels engaged in such trade and commerce, and plaintiff cannot get work without obeying such rules and regulations as hereinafter appears, and such rules and regulations are humiliating to all seamen for, [7] among others, they destroy his freedom of contract, and his right to select his ship, trade and employer, and make him subservient to the will of the employees of defendants at

the offices aforesaid who neither employ or pay him, and the said taking of turns for employment also is humiliating for the reason that it places the nonefficient on the same plane as the efficient employee, or seaman, and is destructive of competition in the calling and stifles the desire for improvement, and large numbers of the best seamen on the said Pacific coast have left the seafaring calling on account of the enforcement of such rules and regulations, and defendants threaten to and will continue to enforce said rules and regulations to the detriment of plaintiff and other seamen on said Pacific coast unless restrained by this Honorable Court from doing so, that under such rules and regulations a seaman can be blacklisted, he has nothing to say about what is written in his said discharge book as to his character, and no appeal from what the master of the vessel he is on or the person designated by such master may write therein, and the whole scheme makes him entirely subservient to the will of defendants who neither employ or pay him when he is engaged in his calling as a seaman.

XII.

That on the 15th day of June, 1925, plaintiff applied at the office of defendants at number 330 Battery Street, in the City and County of San Francisco, seeking employment as a seaman in interstate or foreign commerce and was there by defendants refused registration or a number for turn for employment unless he produced the discharge book, or a discharge book hereinbefore mentioned,

and failing to produce one he was refused either registration or employment, that thereupon he looked for work as a seaman among vessels lying in the port of San Francisco, and on the 18th day of June, 1925, he was engaged by the mate of a vessel called the "Caddopeak," which said vessel is and was on said day engaged in carrying cargo between San Francisco and San Pedro in the State of California, and the State of [8] Washington, and then and there had a cargo on board brought from that state to be unloaded in the State of California, and plaintiff was engaged by said mate to assist in such unloading and thereupon the said mate gave plaintiff a paper which reads as follows:

"June 18th.

Please send bearer C. Andersen to S. S. "Caddopeak."

A. J. RYNDBERG,
Mate."

And the said mate thereupon told plaintiff to take said paper to the office of defendants at 330 Battery Street, San Francisco, aforesaid, for plaintiff's assignment to said "Caddopeak" as a sailor, that plaintiff went to said office of defendants and was there told by defendants that he could not be employed on said "Caddopeak" at all, that they had too many men around their office now and he said plaintiff was refused the consent of defendants to be so or at all employed on said "Caddopeak," that shortly thereafter plaintiff met the said mate on a street and was told by said mate to report on

board of said "Caddopeak" at one o'clock in the afternoon of said 18th day of June, 1925, to work as a sailor in unloading said cargo, and plaintiff so reported at said time and was then and there told by said mate that he could not set him at work as he had received orders from the Port Captain of the Charles Nelson Company who own and operate said "Caddopeak" to take no seamen on her except through the office of defendants, the said Port Captain having authority from the owner and operator of said steamer to give such order and he gave it aforesaid, and by reason of the matters aforesaid plaintiff lost said employment, which was at the wages of $75.00 dollars per month and his board and lodging which were reasonably worth the sum of $60.00 dollars per month, and said employment would have been from said San Francisco, to San Pedro, both in the State of California, and from said San Pedro back to said San Francisco and from there to the State of Washington and from there back to said San Francisco again with a cargo taken from California to the State of Washington and another cargo from said State of Washington back to California.

XIII. [9]

That the duration of said employment would have been at least a month, and plaintiff's losses by reason of the premises aforesaid was the sum of at least $135.00 dollars, and he was experienced in the work for which he was engaged by said mate and of good habits, and at the time he was finally told by said mate that he could not be employed as

aforesaid another seaman was refused employment for the same reason, that said other seaman having also been previously and on the same day engaged by said mate to serve as a sailor on said vessel on the voyage aforesaid and to discharge the cargo aforesaid, and at said time it left said "Caddo-peak" without any sailors, and the work of discharging the cargo of said vessel was being performed by longshoremen at an advance wage of $4.00 per day per man.

XIV.

That defendants although employing no seamen fix the wages that shall be paid seamen in the trade and commerce aforesaid, and refuse to discuss wage questions or working conditions with seamen or those representing them, but arbitrarily fix such wages and conditions all in the trade and commerce aforesaid.

XV.

That plaintiff has already been damaged in the sum of $135.00 dollars by reason of the foregoing complained of acts and rules and regulations of defendants, and said damage will continue unless defendants be restrained from further interfering with the right of plaintiff to freely seek and obtain employment in his calling.

XVI.

That prior to the adoption of the rules and regulations aforesaid mates of vessels engaged in the trade and commerce aforesaid always engaged sailors, for the reason that the mate is the executive officer of such vessels, and works said men on

said vessels, and when in port the masters of said vessels are usually on shore attending to the on shore business of the ship, and plaintiff does not know the names of the agents and servants, members and associates of defendants mentioned in the caption hereof, excepting only W. J. Peterson, their manager. [10]

XVII.

That neither the plaintiff nor any other seaman in the caption hereof mentioned has any plain, speedy, or other or adequate remedy at law for the matters herein complained of.

XVIII.

That in the trade and commerce aforesaid some vessels exclusively carry lumber, for which one class of men are suited to handle, some carry other cargo that another class of men are suited to handle, and some make long and some make short voyages, but under the system adopted by defendants when a seaman's turn comes, he must take the job the turn offers whether he is suited to the trade or not, and whether he wishes to engage on the particular vessel his turn calls for or not, or lose his turn, and the officers of said vessels are deprived of the right to select their own men, or the men most suitable to the trade they are engaged in, and defendants have since their organization claimed the right to and do, engage and/or supply the seaman to all of the vessels hereinbefore mentioned, and in the enforcement of the rules and regulations aforesaid restrain the right of all of such seamen to freely engage in the interstate and foreign commerce aforesaid.

XIX.

That the words "Applicant must report back to the above if he fails to get the job" on the grey card aforesaid, only cover the case of a mistake in an order, and not the right of selection by the mate or other officer of a vessel, as vessels are required to take the particular man sent to them by defendants, defendants so requiring them to do so.

WHEREFORE plaintiff prays judgment against the defendant for the sum of one hundred and thirty-five ($135.00) dollars damages and such other damages as plaintiff may suffer by a continuation of the complained of acts of the defendants and prays that such damages may be trebled, and further prays for a reasonable attorneys fee herein. [11] And he further prays on behalf of himself and all other seamen as hereinbefore mentioned that this Honorable Court will issue its restraining order herein after due notice, restraining the defendants and all other persons acting in concert with them, from doing or performing any of the acts complained of herein, or requiring any of such seamen, plaintiff included, to either register at defendant's office as a prerequisite to obtaining employment in interstate and foreign commerce, or carry the continuous discharge book mentioned herein, or obtain said grey card, or come in contact with the defendants at their said offices at all or either thereof as a prerequisite to obtaining such employment on the vessels and in the trade hereinbefore mentioned, or to purchase said continuous discharge book, or requiring such seamen or any of

them to obey or perform any of the defendants' rules and regulations hereinbefore complained of, and that a permanent injunction issue herein restraining defendant and each thereof, their agents, servants, associates and all persons acting in concert with them in like terms as hereinbefore prayed, to wit, from requiring plaintiff or *or* any other seaman to either register at defendants office or offices, take his turn for employment, purchase or carry said continuous discharge book, carry said grey card, or obey any of defendants' rules and regulations as a condition of obtaining employment in the trade and commerce aforesaid.

Plaintiff on behalf of himself and all of such seamen in the caption hereof named, further prays for his costs herein and such other and further relief as the Court is competent to give in the premises.

H. W. HUTTON.
Attorney for Plaintiff. [12]

[Duly verified]
Filed Jun. 22, 1925. [13]

(Title of Court and Cause.)

MOTION TO DISMISS BILL OF COMPLAINT.

Now comes Shipowners Association of the Pacific Coast and Pacific American Steamship Association, defendants in the above-entitled action, and move the above-entitled Honorable Court to dismiss the bill of complaint herein on each and all of the following grounds, to wit:

I.

That it appears on the face of said bill of complaint that this Court has no jurisdiction to hear and determine this suit.

II.

That it appears on the face of said bill of complaint that this Court has no jurisdiction of the subject matter of this suit.

III.

That said bill of complaint does not set forth facts sufficient to constitute a cause of action.

IV.

That said bill of complaint does not set forth facts sufficient to constitute a cause of action at law or in equity against said defendants, Shipowners Association of the Pacific Coast and Pacific American Steamship Association, or against either of them.

V.

That said bill of complaint does not set forth facts sufficient to constitute a cause of action at law or in equity in favor of plaintiff, Cornelius Andersen, against said defendants, Shipowners Association of the Pacific Coast and Pacific American Steamship Association or against either of them. [14]

VI.

That said bill of complaint does not set forth facts sufficient to constitute a valid cause of action at law or in equity in favor of the purported class of persons on behalf of whom said bill of complaint is brought, against said defendants, Shipowners

Association of the Pacific Coast and Pacific American Steamship Association, or against either of them.

VII.

That it appears on the face of said bill of complaint that no question is therein set forth of common or general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the court, or of common or general interest to the purported class of persons on behalf of whom said bill of complaint is brought.

VIII.

That said bill of complaint does not set forth facts sufficient to authorize or entitle said plaintiff, Cornelius Andersen, to sue on behalf of the purported class of persons on behalf of whom said bill of complaint is brought.

IX.

That said bill of complaint does not set forth facts sufficient to entitle plaintiff to damages, or to an injunction, or to a temporary injunction, or to a restraining order.

X.

That said bill of complaint does not set forth facts sufficient to entitle plaintiff to any relief whatever.

XI.

That said bill of complaint is wholly without equity.

WHEREFORE, defendants, Shipowners Association of [15] the Pacific Coast and Pacific American Steamship Association, pray that this

Honorable Court make its order dismissing bill of complaint on file herein, and that they have and recover judgment for costs herein incurred.

C. F. ELDRIDGE,
GEORGE O. BAHRS,

Attorneys for Defendants, Shipowners Association of the Pacific Coast, and Pacific American Steamship Association.

Filed Jul. 10, 1925. [16]

(Title of Court and Cause.)

OPINION.

Motion to Dismiss Granted.

August 21, 1925.

PARTRIDGE.—In this case I am bound by the decision of the Supreme Court of the United States in Street vs. Ship Owners Association, 263 U. S. 334, and the decision of the Court of Appeals for this Circuit in Street vs. Ship Owners Association, 299 Fed. 5, and Tilbury vs. Oregon Stevedoring Company, filed August 3, 1925, and not yet reported.

The motion to dismiss is therefore granted.

Filed Aug. 22, 1925. [17]

At a stated term, to wit, the July term, A. D. 1925, of the Southern Division of the United States District Court for the Northern District of California, Second Division, held at the courtroom in the City and County of San Francisco, on Saturday, the 22d day of August, in the year of our Lord one thousand nine hundred and

twenty-five. Present: The Honorable JOHN S. PARTRIDGE, District Judge.

[Title of Cause.]

(ORDER GRANTING MOTION TO DISMISS.)

Defendants' motion to dismiss heretofore heard and submitted, being now fully considered, and the Court having filed its written opinion thereon, it is, in accordance with said opinion, ORDERED that said motion to dismiss be and the same is hereby granted. [18]

(Title of Court and Cause.)

FINAL DECREE.

The motions of the defendants in the above cause to dismiss the bill of complaint on file herein having been heretofore, and on the 22d day of August, 1925, granted by the Court in the above-entitled cause,—

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiff's bill of complaint herein be, and the same is hereby, dismissed, with costs to the defendants.

Dated: August 27, 1925.

JOHN S. PARTRIDGE,
Judge.

Filed and entered Aug. 27, 1925. [19]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Plaintiff designates and files the following assign-

ment of errors upon which he will rely in the prosecution of his appeal in the above-entitled cause from the final decree given and made by the above-entitled court on the 27th day of August, 1925, in the above cause.

That the District Court of the United States, for the Southern Division, Northern District of California, Third Division, in giving its opinion and rendering its final decree of August 27th, 1925, erred as follows:

1. In finding and deciding that it, said court, was bound by the decision of the Supreme Court, of the United States, in the case of Street vs. Shipowners Association, et al., 263 U. S. 334, for the reason that all that was decided in said decision was, that an appeal therein could not be taken direct to the Supreme Court of the United States in that case,

2. In finding and deciding that it, said court, was bound by the decision of the United States Circuit Court of Appeals for the Ninth Circuit, in the case of Street vs. Shipowners Association et al., 299 Fed. 5, for the reason, that in the within case it appears, that plaintiff herein made demand on the defendants for registration and employment and was refused, and also obtained employment and suffered loss, by the loss of such employment, because he had not complied with defendants' rules, both of which state of fact were absent in the said case in which Alfred Street was plaintiff. [20]

3. In finding and deciding that it, said Court, was bound by the decision of the United States

Circuit Court of Appeals for the Ninth Circuit, in the case of Tillbury vs. Shipowners Association et al., decided by that court on the 3d day of August, 1925, for the reason, that none of the navigation laws of the United States relating to seamen were involved in that case, nor was the manning or navigation of vessels, but it related to the employment of stevedores alone.

4. In not finding and deciding that defendants' rules and regulations complained of in the complaint herein unlawfully interfered with the right of plaintiff, and all other seamen mentioned, to freedom of contract in obtaining employment.

5. In not finding and deciding that the policy of the United States as expressed by the acts of Congress as to the employment and discharge of seamen was exclusive.

6. In not finding and deciding that the rules of the defendants complained of herein, interfered with the right of each of its members, and their masters and/or mates of vessels to select their own employees.

7. In not finding and deciding that the complained of rules and regulations of defendants in the discharge of seamen, were regulations ot interstate and foreign commerce, and therefore violated the provisions of Section 8, of Article I of the Constitution of the *United in* that such rules and regulations were within the exclusive power of Congress to make.

8. In not finding and deciding that defendants are in the business of supplying seamen in inter-

state and foreign commerce, and are thereby violating the provisions of Sections 4514 and 4515 of the Revised Statutes of the United States.

9. In not finding and deciding that the rules complained of in the complaint herein violated the provisions of Section 4508 of the Revised Statutes of the United States, and that the provisions of said section are exclusive as to the things therein required to be done by a United States Shipping Commissioner. [21]

10. In not finding and deciding that the certificate of discharge containing the "character, conduct and qualifications" of seamen provided for in section 4553 of the Revised Statutes of the United States, and the provisions of said section are exclusive, and that the continuous discharge book provided for by defendants' rules and regulations, and the report of the master on each seaman to defendants violate the provisions of said section 4515 of said Revised Statutes.

11. In not finding and deciding that the duties of a United States Shipping Commissioner as provided by the Revised Statutes of the United States in relation to the shipment, supplying and discharge of seamen are exclusive.

12. In not finding and deciding that the provisions of section 4507 and 4508 of the Revised Statutes of the United States, each provide the exclusive manner in which the acts mentioned in each of said sections shall be performed.

13. In not finding and deciding that the rules prescribed by defendants, and each thereof, the complying with which by plaintiff were necessary to

enable him to sell his labor and engage in interstate and foreign commerce, interfered with plaintiff's right to dispose of his labor to his own best advantage, and thereby interfered with his property right to so dispose of his labor.

14. In not finding and deciding that each and the whole of defendants' rules complained of in the complaint herein, restrained plaintiff and all other seamen from freely engaging in interstate and foreign commerce.

15. In not finding and deciding that when the whole of one of the instrumentalities through which interstate and foreign commerce by sea is carried on was restrained, that the whole of such commerce is restrained.

16. In not finding and deciding that plaintiff could not be required to do more than the law required him to do in order to sell his labor and engage in interstate and foreign commerce by sea. [22]

17. In not finding and deciding that the rules of defendants complained of in the complaint herein, and their enforcement, deprived plaintiff of his property right to sell his labor without lawful authority, and *were the* taking of property without due process of law.

18. In not finding and deciding that the complained of rules of defendants mentioned in the complaint herein violated the spirit of the Constitution of the United States, as expressed in the following language contained in the preamble thereto, to wit:

"In Order to * * * promote the general Welfare, and secure the Blessings of Liberty

to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

19. In not finding and deciding that the complained of rules of defendants violated Amendment IX to the Constitution of the United States, which reads:

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

20. In granting the motion of each of the defendants to dismiss plaintiff's complaint herein.

21. In rendering a decree dismissing plaintiff's complaint herein.

22. In granting each of the grounds of the motion of the defendants to dismiss plaintiff's complaint.

23. In deciding that plaintiff's complaint did not set forth facts sufficient to constitute a cause of action as to either of the defendants or both of them.

24. In deciding that plaintiff's complaint was without equity.

25. In deciding that plaintiff's complaint did not set forth facts sufficient to entitle plaintiff to any relief.

26. In deciding that it was without jurisdiction of plaintiff's action.

29. In not finding and deciding that defendants' rules complained of violated the provisions of the Constitution of the United States.

30. In not finding and deciding that when defendant deprived plaintiff of his employment on

the "Caddopeak" they interfered with his right to engage in interstate commerce. [23]

31. In not finding and deciding that each of the acts of the defendants as complained of in plaintiff's complaint were violative of the provisions of the anti-trust laws of the United States, to wit, the act commonly known as the Sherman Act, and the act commonly called the Clayton Act.

32. In not finding and deciding that each of the acts of the defendants complained of in plaintiff's complaint violated each of the acts mentioned in the last paragraph hereof, in that they restrained interstate and foreign commerce by sea.

33. In not finding and deciding that Congress has supplied all the rules and regulations that can be supplied in the supplying, engaging and discharging of seamen in interstate and foreign commerce.

34. In not finding and deciding that a seaman engaged in interstate and foreign commerce on American Merchant vessels has a right common to all other employees of selecting his own employer, his own trade, and his own place of employment, excepting only under such rules and regulations, as Congress may prescribe.

35. In not finding and deciding that the taking of turns for employment was bound to reduce the standard of efficiency of those compelled to comply therewith.

36. In not finding and deciding that plaintiff and all other seamen engaged in interstate and foreign commerce, had a right to engage therein with-

out taking his turn for employment and without being subservient to the prior demands of anyone, excepting only as a prospective employer might desire to employ him.

37. In not finding and deciding that *that* defendants associations were combinations in restraint of trade, and abridged the rights of plaintiff and all other seamen employed in interstate and foreign commerce by sea as American seamen, and therefore are unlawful.

H. W. HUTTON.
Attorney for Plaintiff.

Filed Aug. 28, 1925. [24]

[Title of Court and Cause.]

PETITION FOR ALLOWANCE OF APPEAL AND ORDER ALLOWING APPEAL.

Cornelius Andersen, the plaintiff above named, on behalf of himself and all other seamen engaged in interstate and foreign commerce by sea, on vessels flying the flag of the United States of America, and sailing to and from ports on the Pacific Coast of the United States of America, feeling themselves aggrieved by the final decree given made and entered in this cause by the above-entitled court on the 27th day of August, one thousand nine hundred and twenty-five (1925), hereby petitions for the allowance of an appeal from and does hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Cir-

cuit, for the reasons specified in the assignments of errors, which is filed herewith.

And he prays that his said appeal be allowed and that citation issue as provided by law, and that a transcript of the records, proceedings and papers upon which said decree was based, and the record since said decree, duly authenticated, be sent to the said United States Circuit Court of Appeals for the Ninth Circuit, sitting at the City and County of San Francisco, State of California.

And your petitioner prays that the proper order allowing said appeal be made, also fixing the amount of the security to be required [25] of him to effect his said appeal.

Dated at San Francisco, California, the 28th day of August, 1925.

H. W. HUTTON,
Attorney for said Petitioner,

Upon presenting the foregoing petition of Cornelius Anderson, as aforesaid, asking for the allowance of an appeal from the final decree given and made and entered in the above cause and herein, on the 27th day of August, 1925, to the United States Circuit Court of Appeals for the Ninth Circuit,—

IT IS ORDERED that such appeal be allowed as prayed for in said petition, and the same is hereby allowed.

IT IS FURTHER ORDERED that the bond on said appeal be, and the same is hereby fixed at the sum of Three Hundred ($300.00) Dollars, the

same to act as a bond for costs and damages on the appeal.

Dated this 28th day of August, one thousand nine hundred and twenty-five (1925).

JOHN S. PARTRIDGE,
Judge.

Filed Aug. 28, 1925. [26]

BOND ON APPEAL.

Bond for costs and damages in the sum of $300, filed August 29, 1925.

(Title of Court and Cause.)

PRAECIPE FOR RECORD ON APPEAL.

To the Clerk of said Court:

Sir: Please prepare and issue record on appeal in the above case consisting of the following papers:

1. The complaint.
2. Motion to dismiss.
3. Opinion of the Court.
4. Order granting motion to dismiss.
5. Decree.
6. Petition for appeal and order allowing appeal.
7. Assignment of errors.
8. Bond on appeal.
9. Citation on appeal (original).

H. W. HUTTON,
Attorney for Plaintiff.

Filed Aug. 28, 1925. [29]

(Title of Court and Cause.)

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD.

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing twenty-nine (29) pages, numbered from 1 to 29 inclusive, to be a full, true and correct copy of the record and proceedings as enumerated in the praecipe for record on appeal as the same remains of record and on file in the office of the Clerk of said Court in the above-entitled cause, and that the same constitutes the record on appeal to the United States Circuit Court of Appeals, for the Ninth Circuit.

I further certify that the cost of the foregoing record on appeal is $4.75; that said amount was paid by the plaintiff and that the original citation issued in said cause is hereto annexed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 31st day of August, A. D. 1925.

[Seal] WALTER B. MALING,

Clerk of the United States District Court, Northern District of California. [30]

CITATION ON APPEAL.

UNITED STATES OF AMERICA—ss.

The President of the United States, To Shipowners Association of the Pacific Coast; Pacific American Steamship Association, Their Mem-

bers, Associates, Agents and Servants, John Doe and Richard Roe, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California, wherein Cornelius Andersen, suing on behalf of himself and all other seamen employed in interstate and foreign commerce by sea on vessels flying the flag of and engaged in the merchant service of the United States of America, and sailing to and from ports of the Pacific Coast of the said United States, is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable JOHN S. PARTRIDGE, United States District Judge for the Northern District of California, this 28th day of August, A. D. 1925.

JOHN S. PARTRIDGE,
United States District Judge. [31]

Filed Aug. 28, 1925.

[Endorsed]: No. 4682. United States Circuit Court of Appeals for the Ninth Circuit. Cornelius Anderson, Suing on Behalf of Himself and All

Other Seamen Employed in Interstate and Foreign Commerce by Sea on Vessels Flying the Flag of and Engaged in the Merchant Service of the United States of America, and Sailing to and from Ports of the Pacific Coast of the said United States, Appellant, vs. Shipowners Association of the Pacific Coast, Associates, Agents and Servants, John Doe and Richard Roe, Appellees. Transcript of Record. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, Third Division.

Filed September 1, 1925.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

CORNELIUS ANDERSEN, etc.,
Plaintiff and Appellant,

vs.

SHIPOWNERS ASSOCIATION OF THE PACIFIC COAST et al.,
Defendants and Appellees.

DESIGNATION OF PARTS OF RECORD TO BE PRINTED.

1. Print the whole record, excepting the bond on appeal, and in lieu thereof, print "Bond for

costs and damages in the sum of $300,000, filed August 29th, 1925.

2. Omit the caption on all papers excepting the complaint, and in lieu of other captions print "Title of Court and Cause."

3. Omit all verifications and in lieu thereof print "Duly verified."

4. Omit filing certificates and in lieu thereof print, "Filed in —— Court, ——, 1925, inserting court and date.

5. Print a designation of the paper at the head of each paper, such as "Bill of Complaint," etc.

H. W. HUTTON,
Attorney for Plaintiff and Appellant.

[Endorsed]: No. 4682. In the United States Circuit Court of Appeals for the Ninth Circuit. In Equity. Cornelius Andersen et al., Plaintiff and Appellant, vs. Shipowners Association of the Pacific Coast et al., Defendants and Appellants. Designation of Parts of Record to be Printed. Copy Received this 1st day of September, 1925. C. F. Eldridge, Geo. O. Bahrs, Attys. for Defendants and Appellees. Filed Sep. 2, 1925. F. D. Monckton, Clerk.

[Endorsed]: Printed Transcript of Record. Filed September 12, 1925. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

No. 4682

United States

Circuit Court of Appeals

For the Ninth Circuit.

CORNELIUS ANDERSON, Suing on Behalf of Himself and All Other Seamen Employed in Interstate and Foreign Commerce by Sea on Vessels Flying the Flag of and Engaged in the Merchant Service of the United States of America, and Sailing to and from Ports of the Pacific Coast of the said United States,

Appellant,

vs.

SHIPOWNERS ASSOCIATION OF THE PACIFIC COAST, Associates, Agents and Servants, JOHN DOE and RICHARD ROE,

Appellees.

Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, Third Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

Supreme Court of the United States.

No. 777—October Term, 1925.

CORNELIUS ANDERSON, etc.,

Petitioner,

vs.

SHIPOWNERS ASSOCIATION OF THE PACIFIC COAST et al.

ORDER ON PETITION FOR WRIT OF CERTIORARI.

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

On consideration of the petition for a writ of certiorari herein to the United States Circuit Court of Appeals for the Ninth Circuit, and of the argument of counsel thereupon had,—

IT IS NOW HERE ORDERED by this Court that the said petition be, and the same is hereby, denied.

November 23, 1925.

A true copy.

[Seal] Test: WM. R. STANSBURY,
Clerk of the Supreme Court of the United States.

No. 4682. United States Circuit Court of Appeals for the Ninth Circuit. Filed Dec. 3, 1925. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

[Endorsed]: File No. 31,500. Supreme Court of the United States. October Term, 1925. Term No.

777. Order on Petition for Writ of Certiorari. Filed November 23, 1925.

At a stated term, to wit, the October Term, A. D. 1925, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Courtroom thereof, in the City and County of San Francisco, in the State of California, on Thursday, the third day of December, in the Year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable WILLIAM H. HUNT, Circuit Judge, Presiding; Honorable FRANK H. RUDKIN, Circuit Judge; Honorable WALLACE McCAMANT, Circuit Judge.

No. 4682.

CORNELIUS ANDERSON, Suing on Behalf of Himself and All Other Seamen Employed in Interstate and Foreign Commerce by Sea on Vessels Flying the Flag of and Engaged in the Merchant Service of the United States of America, and Sailing to and from Ports of the Pacific Coast of the Said United States,

Appellant,

vs.

SHIPOWNERS ASSOCIATION OF THE PACIFIC COAST, Associates, Agents and Servants, JOHN DOE and RICHARD ROE,

Appellees.

ORDER OF SUBMISSION.

ORDERED above-entitled cause argued by Mr. H. W. Hutton, Counsel for the Appellant, and by Mr. Chauncey P. Eldridge, counsel for the appellees, and submitted to the Court for consideration and decision, with leave to counsel for the appellant to file a reply brief within ten (10) days from date, and with leave to counsel for the appellees to reply thereto within two (2) days thereafter, if so advised.

At a stated term, to wit, the October Term, A. D. 1925, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the eighteenth day of January, in the year of our Lord one thousand nine hundred and twenty-six. Present: The Honorable WILLIAM H. HUNT, Circuit Judge, Presiding; Honorable WILLIAM W. MORROW, Circuit Judge.

No. 4682.

CORNELIUS ANDERSEN, Suing on Behalf of Himself and All Other Seamen Employed in Interstate and Foreign Commerce by Sea on Vessels Flying the Flag of and Engaged in the Merchant Service of the United States of America, and Sailing to and from Ports of the Pacific Coast of the said United States,

Appellants,

vs.

SHIPOWNERS ASSOCIATION OF THE PACIFIC COAST, Associates, Agents and Servants.

JOHN DOE and RICHARD ROE,

Appellees.

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF DECREE.

By direction of the Honorable William H. Hunt, Frank H. Rudkin and Wallace McCamant, Circuit Judges, before whom the cause was heard, ORDERED that the typewritten opinion this day rendered by this Court in the above-entitled cause be forthwith filed by the Clerk, and that a decree be filed and recorded in the minutes of this court in accordance with the opinion filed therein.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 4682.

CORNELIUS ANDERSON,

Appellant,

vs.

SHIPOWNERS ASSOCIATION OF THE PACIFIC COAST and PACIFIC AMERICAN STEAMSHIP ASSOCIATION,

Appellees.

OPINION U. S. CIRCUIT COURT OF APPEALS.

Appeal from the District Court for the Northern District of California, Southern Division.

Before HUNT, RUDKIN and McCAMANT, Circuit Judges.

Appellant, hereinafter called plaintiff, sues on behalf of himself and all other seamen employed in interstate and foreign commerce by sea on American merchant vessels sailing to and from Pacific Coast ports of the United States. He seeks to enjoin certain practices of appellees, hereinafter called the defendants, in the employment of seamen on the ground that these practices constitute a restraint of interstate and foreign commerce. The District Court sustained defendants' motion to dismiss.

McCAMANT, Circuit Judge.—The practices sought to be enjoined are stated with some fulness in the opinion of this Court in the suit brought by Alfred Street against these same defendants, 299 F. 5; also in the opinion of the Supreme Court in the same case 263 U. S. 334. It is charged that the defendants control every vessel flying the American flag and engaged in the carrying of passengers and cargo between Pacific Coast ports and other American and foreign ports; that they have established a system for registering seamen and that it is impossible for a seaman not registered with them to secure employment. Plaintiff alleges that on the 15th of June, 1925, he applied at the offices of the

defendants in San Francisco for employment as a seaman and was refused employment because he did not have the registration papers required by the defendants' rules. It is alleged that on the 18th of June plaintiff was employed by the mate of the Steamship "Caddopeak," that defendants interfered with plaintiff's contract of employment and caused his employer to dispense with his services, to plaintiff's damage in the sum of $135.

Defendants challenge the jurisdiction of the federal courts. It is conceded that the jurisdiction cannot rest on diversity of citizenship because the amount in controversy is less than $3,000. Pinel vs. Pinel, 240 U. S. 594, 596–697.

Plaintiff relies on Section 24 of the Judicial Code, Section 991 Comp. Stat., subdivisions 8 and 23, These statutes are as follows:

> "The District Courts shall have original jurisdiction as follows:
>
> "Eighth. Of all suits and proceedings arising under any law regulating commerce, except those suits and proceedings exclusive jurisdiction of which has been conferred upon the Commerce Court."
>
> "Twenty-third. Of all suits and proceedings arising under any law to protect trade and commerce against restraints and monopolies."

Plaintiff also relies on Section 16 of the Clayton Act, Section 88350 Comp. Stat., which is in part as follows:

> "Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United

States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws."

It is not alleged that the purpose of the practice complained of is the restraint of interstate or foreign commerce. It is contended that less capable men are employed on vessels than would be employed if the officers of the vessels looked after the employment of seamen. This result is alleged to follow from defendants' practice of employing seamen in the order in which they apply for work. This is at most an indirect and incidental impediment to the transaction of interstate commerce. The conduct complained of falls without the inhibition of the Sherman Act, the Clayton Act, and the federal anti-trust acts generally. Street vs. Shipowners Association, 299 F. 5; Tilbury v. Oregon Stevedoring Co. Inc., 7 F. (2d) 1. The law applicable to this contention of plaintiff has been stated by this Court so clearly and so recently in these decisions that it would serve no good purpose to restate the law and cite in this opinion the cases construing the federal anti-trust laws.

It is sought to distinguish the Street case on the ground that it was not alleged that plaintiff therein had applied for employment and been refused. This allegation, however, is found in the bill of complaint in the Tilbury case which was adjudged insufficient by the District Court for Oregon and by this Court.

It is also contended that the practices complained of violate the federal statutes defining the manner in which seamen are to be employed and the nature

of the shipping contract. Sections 4508, 4514, 4515, 4551 and 4612 R. S., Sections 8297, 8304, 8305, 8340 and 8392 Comp. Stat. The registration of seamen by the defendants and the arrangements made for their employment are preliminary to the execution of the form of contract required by the statute. It does not appear from the bill that the defendants have taken seamen to sea without execution before a commissioner of the statutory contract or that defendants have otherwise violated the above statutes.

If plaintiff has a cause of action it is not cognizable in the federal courts.

The decree is affirmed.

[Endorsed]: Filed Jan. 18, 1926. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States' Circuit Court of Appeals for the Ninth Circuit.

No. 4682.

CORNELIUS ANDERSEN, Suing on Behalf of Himself and All Other Seamen Employed in Interstate and Foreign Commerce by Sea on Vessels Flying the Flag of and Engaged in the Merchant Service of the United States of America, and Sailing to and from Ports of the Pacific Coast of the said United States,

Appellants,

vs.

SHIPOWNERS ASSOCIATION OF THE PACIFIC COAST, Associates, Agents and Servants, JOHN DOE and RICHARD ROE,
Appellees.

DECREE U. S. CIRCUIT COURT OF APPEALS.

Appeal from the Southern Division of the District Court of the United States for the Northern District of California, Third Division.

This cause came on to be heard on the Transcript of the Record from the Southern Division of the District Court of the United States for the Northern District of California, Third Division and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, affirmed, with costs in favor of the appellees and against the appellant.

It is further ordered, adjudged and decreed by this Court, that the appellees recover against the appellant for their costs herein expended, and have execution therefor.

[Endorsed]: Filed and Entered January 18, 1926. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 4682.

CORNELIUS ANDERSON, Suing on Behalf of Himself and All Other Seamen Employed in Interstate and Foreign Commerce by Sea on Vessels Flying the Flag of and Engaged in the Merchant Service of the United States of America, and Sailing to and from Ports of the Pacific Coast of the said United States,

Appellants,

vs.

SHIPOWNERS ASSOCIATION OF THE PACIFIC COAST, Associates, Agents and Servants, JOHN DOE and RICHARD ROE,

Appellees.

CERTIFICATE OF CLERK U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT TO RECORD CERTIFIED UNDER RULE 35 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, F. D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit Circuit Court of Appeals for the Ninth Circuit do hereby certify the foregoing forty-seven (47) pages, 47, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of

counsel for the appellant and certified under Rule 35 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 1st day of February, A. D. 1926.

[Seal]

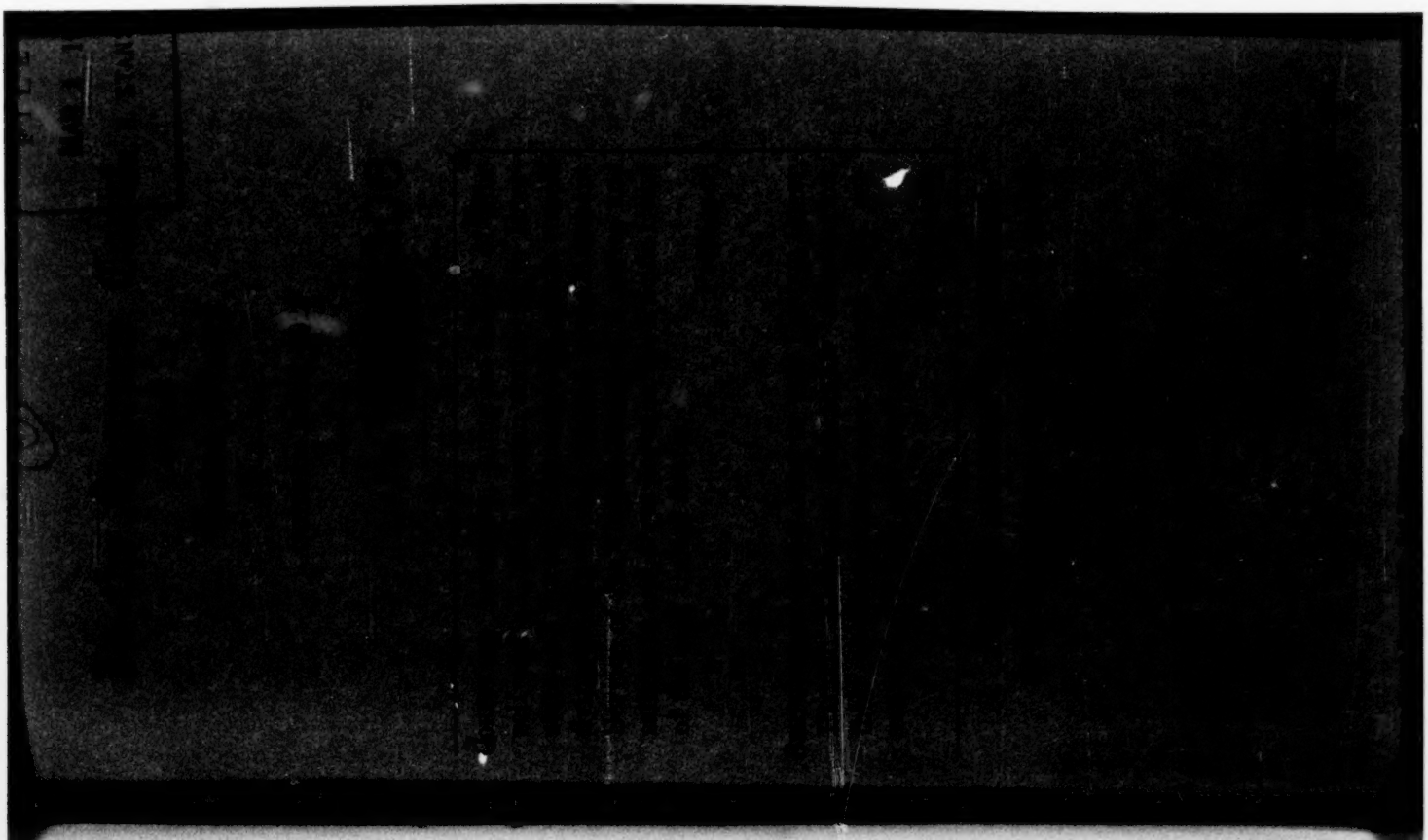
F. D. MONCKTON,
Clerk.
By Paul P. O'Brien,
Deputy Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 19, 1926

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(2340)



Subject Index

	Pages
Summary of statement	2, 7
Petitioner is a qualified American seaman	2
Respondents have combined to restrain the freedom of petitioner and all other American seamen in engaging in interstate and foreign commerce	2-3
Respondents have a monopoly that embraces over three hundred vessels	3
No one can get employment without obeying respondents' rules	3
Respondents' rules	3-4
Respondents' directions to shipmasters	4
Respondents' directions to seamen	4
Respondents have a continuous discharge book	3-4
The fee for the book is 25¢; and it is required that several matters of personal description of the man who carries it shall be in the book	4-5
Each seaman is required to take his turn for employment which stifles the desire for improvement	5
To obtain employment a seaman must obtain a continuous discharge book, register his name for employment turn, and when his turn comes is given a card to the master of the vessel he is to be employed on on which is printed that he must not be employed unless it is signed by the respondents and has the card	5
The discharge book is given to the master when the seaman joins the vessel who keeps it until the expiration of the service, when the master returns it to him with the latter's opinion on the qualification of the seaman	5
Petitioner applied to respondents' office June 15th, 1925, for registration for employment without a continuous discharge book, and registration was refused. On 18th of June, 1925, he obtained employment on a vessel called the "Caddopeak" engaged in interstate commerce and received a paper from her mate requesting that he (petitioner) be sent to that vessel to work	6
Petitioner took the paper to respondents' office and was refused assignment to that vessel	6

Pages

Meeting the mate the latter told him to go to work at 1 P. M. 6

Petitioner reported at 1 P. M. for work, when the port captain of the vessel told the mate to employ no one except through respondents' office 6

Congress has legislated upon the same subject 6

Respondents' rules have driven large numbers of the best seamen from the sea 6

Respondents' rules destroy freedom of contract 6

They also destroy competition among the seamen, the right of a seaman to select his own ship, the master the right to select his own men 7

Respondents' rules make seamen entirely subservient to the will of respondents who neither employs nor pays them 7

The Circuit Court of Appeals held that the sum of $135.00 was insufficient to vest the Federal Court with jurisdiction contrary to the provision of Section 7 of the Sherman Act 7

It also held that there was no allegation in the complaint that the purpose of respondents' rules is the restraint of interstate and foreign commerce 7

Such an allegation is in the complaint but we are certain that it was not necessary 7

GENERAL REASONS RELIED ON FOR THE ISSUANCE OF THE WRIT 7

Petitioner is entitled to a ruling from the highest court in the United States upon the several questions involved herein 7

Several of the questions involved herein are both legally and economically fundamental 7

Society demands that a person provide himself with necessities 8

It is therefore the duty of society to protect a person obeying its mandate in that behalf 8

No person should be required to do more than the law requires in obeying society's demands 8

The law is plain as to what a seaman shall do in providing himself with necessities 8

Pages

No combination of persons has a right to supplement the provisions of law 8

No combination of persons has a right to create a monopoly in interstate and foreign commerce 8

No person has a right to surrender the control of his business to a central body 8

No person should be compelled to obey the commands of a body that neither employs nor pays him 8

Nor should be compelled to obey commands that destroy his freedom of contract to select his own employer and place of employment 8

It is wrong to compel licensed officers of vessels to take seamen that they have to command whether they wish to or not 8

The right of selection of the agencies with which to do the work should be left to the officer who commands them 8

That is particularly necessary in a calling as hazardous as that of the sea 9

The licenses and lives of the officers of vessels are at stake and they should have the right to select their own men. 9

Open competition should be present in all callings 9

All of the above is destroyed by respondents' rules 9

The learned Circuit Court of Appeals was in error in deciding that a Federal Court had no jurisdiction in this case, on account of the amount involved being only $135.00 ..... 8, 10

It is not disputed petitioner had a cause of action 9, 10

Sec. 7 of the Sherman Act says a Federal Court has jurisdiction of this class of cases without respect to the amount in controversy 10

The court had jurisdiction under the Judicial Code 10

The learned Circuit Court of Appeals erred in holding there was no allegation that the purpose of respondents was to violate the anti-trust laws, for the reason that such allegation was unnecessary and there is such allegation in the complaint 10

The same court had previously held such an allegation was unnecessary 11

Pages

There can be no divided authority over interstate and foreign commerce 12

Congress has provided a complete scheme for the supplying shipment and discharge of seamen..... 12

The purpose of such legislation is the protection of foreign and interstate commerce..... 12

Respondents divide authority with Congress.....13, 14

The provisions of the Revised Statutes are exclusive.....14, 15

Petitioner is interfered with in his right to engage in interstate and foreign commerce..... 15

Respondents' combination would be a restraint of trade at common law, and must be under the Sherman and Clayton Acts 15

If a state passed similar laws they would be declared invalid 16

The anti-trust laws apply to all classes..... 16

Petitioner has individual needs..... 17

Anything that interferes with a person's right to engage in interstate and foreign commerce, or creates a monopoly therein is a restraint and if it affects all of one instrumentality of commerce it must be a restraint on the whole.

SUBJECT MATTER OF BRIEF.

Pages

The whole of commerce by sea is restrained.....19, 20

Petitioner as an alien can maintain this action.....20, 21

The combination of the respondents is a monopoly..... 21

Such monopoly is being used to enforce respondents' rules 21

Petitioner's right to a free market for his labor is interfered with by the respondents.....22-31

Petitioner was entitled to injunctive relief.....32-33

The rules and regulations are regulations of commerce which only the Congress has the power to make.....33-42

Petitioner had a right to bring a class suit..... 42

The effect of the rules and regulations of respondents...43-48

Effect of the Shipping Commissioners Act.....48-50

Table of Authorities Cited

	Pages
Atkins v. W. A. Fletcher Co., 65 N. J. Eq. 658-666	33
Beatty v. Krutz, 2 Peters 563-583-4	42
Berry v. Donovan, 188 Mass. 353-355-6	28
Callon v. Hope, 75 Fed. 758	42
Cardell v. U. S., 6 Fed. (2nd Ser.) 188	16
Curran v. Galen, 152 N. Y. 33-37	33, 37
Duplex v. Deering, 254 U. S. 443-464	32, 42
Eastern States Lumber Ass'n v. U. S., 234 U. S. 600	22
Erdman v. Mitchell, 207 Pa. St. 79	28
Florence v. Helms, 136 Cal. 613	42
Gable v. Vobbegut Shoe Co., 274 Fed. 66	32
Gieske v. Anderson, 77 Cal. 247	42
Gillespie v. People, 188 Ill. 176	31
Gleason v. Thaw, 185 Fed. 345-347	30
Gompers v. Buck Stove & Range Co., 221 U. S. 418	43
Grand Trunk Ry. v. Lindsay, 233 U. S. 42, 48	10
Hilton v. Eckersley, 6 Ellis & B. 47	23
Hundley v. Louisville & Nashville Ry. Co., 105 Ky. 164-165	22
Jones v. Leslie, 61 Wash. 107-110	29
Kenney v. Blake, 125 Fed. 672	35
Loewe v. Lawlor, 208 U. S. 303-4	16, 38
Luckenbach S. S. Co. v. Campbell, 2 Fed. (2nd Ser.) 223-224	11
McCabe v. Atchison, Topeka & Santa Fe Ry. Co., 235 U. S. 152, 162	17
Missouri Pacific Railway Co. v. Stroud, 267 N. Y. 404-408	12
Mogul S. S. Co. v. McGregor, 23 Q. B. (1889) 598-603	25
Patterson v. Bark Eudora, 190 U. S. 169-182	12
People v. McFarlin, 89 N. Y. 527	30
Plant v. Wood, 176 Mass. 492-498	25
Ritchie v. People, 155 Ill. 98 etc.	31
Sailors Union v. Hammond L. Co., 156 Fed. 454	30
Seaboard Air Line Ry. Co. v. Duval, 235 U. S. 477, 478	11
Slaughter House Cases, 16 Wall. 36-127	30
Street v. Shipowners Association, et al., 299 Fed. 5	16

Pages

The Lottawana, 21 Wall. 557-578 34
The Passenger Cases, 7 Howard. 232-407 19
The Troop, 117 Fed. 557 35
Thomsen v. Cayser, 243 U. S. 66-85 39
Wheelock v. First Pres. Church, 119 Cal. 477 42
Wilson v. New, 243 U. S. 332 39

CONSTITUTION, STATUTES, ACTS CITED.

U. S. Constitution, Sec. 8, Art. 1, Clause 1 34
Judiciary Act. Section 24.
Paragraph Fifth 32
Paragraph Eighth 10
Twenty-third 10
Clayton Act, Sec. 16 ..... 10, 32
Equity Rule 38 42
Sherman Act, Sec. 7 ..... 7, 10
Revised Statutes.
Section 4501 49
Section 4504 49
Section 4507 35
Section 4508 ..... 12, 13, 36
Section 4514 38
Section 4515 38
Section 4551 ..... 13, 36
Section 4612 ..... 13, 36
British Merchant Shipping Act.
Section 146 49
Section 147 49
Reports of Public Bodies.
U. S. Dep. of Labor Bureau Pamphlet No. 235 44
U. S. Shipping Board 45
U. S. Shipping Board 1919, pp. 24, 25 ..... 45, 46
Text Books.
Labatt on Master and Servant 33

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1925

No.

CORNELIUS ANDERSON, suing on behalf of himself and all other seamen employed in Interstate and Foreign Commerce by sea on vessels flying the flag of and engaged in the Merchant Service of the United States of America and sailing to and from ports on the Pacific Coast of the said United States,

Petitioner,

vs.

SHIPOWNERS ASSOCIATION OF THE PACIFIC COAST, PACIFIC AMERICAN STEAMSHIP ASSOCIATION, their members, associates, agents and servants, JOHN DOE and RICHARD ROE,

Respondents.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit
After Hearing and Decision.

To the Honorable William Howard Taft, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Cornelius Anderson, on behalf of himself and other seamen, respectfully petitions the Court for a writ of certiorari to be directed to the United States Circuit Court of Appeals for the Ninth Circuit. After hearing and decision in that Court, to review a decree given and made by the Southern Division of the District Court of the United States, for the Northern District of California, rendered August 27, 1925, granting a motion to dismiss petitioner's complaint, in which he sought injunctive relief against respondents herein, to restrain each thereof from violating certain provisions of the anti-trust and maritime laws of the United States, and from enforcing certain regulations of interstate and foreign commerce, that were without any sanction, as they had never been enacted by the Congress of the United States, the transcript on appeal in said cause having been filed in the said United States Circuit Court of Appeals, on the 12th day of September, 1925, and decided January 18th, 1926, becoming final February 18th, 1926.

SUMMARY OF STATEMENT.

Petitioner is a qualified American seaman, a sailor, and filed his complaint June 22, 1925, in which he alleged that respondents had combined together to

restrain the freedom of himself and all other American seamen from freely engaging in interstate and foreign commerce by sea on merchant vessels of the United States of America, sailing to and from ports on the Pacific Coast of the United States, the complaint showing that a monopoly of in excess of 300, about all, of the vessels engaged in such trade were, and that no one can get employment therein, or on such vessels without obeying the rules and regulations imposed by respondents, among which are the carrying of a continuous discharge book on which is printed:

"EMPLOYMENT SERVICE BUREAU,
Pacific American Steamship Association, Shipowners Ass'n. of the Pacific Coast,
San Francisco, California.

This certificate and discharge is issued under the authority of the Pacific American Steamship Association and the Shipowners Association of the Pacific Coast, and no person will be employed by these associations unless he is registered at their employment offices and has in his possession this Certificate and Discharge.

The lawful holder of this certificate will deliver it to the Master of the vessel when he signs Articles of Agreement, and the Master will retain the same in his possession until the seaman is discharged or has left the employment.

When the seaman severs his connection with the employment the Master will deliver this Certificate to the owner after he, or a person designated by him, has filled out in the proper columns the record of the seaman's service, and the reason of the discharge.

This certificate is the personal record of the seaman and is the basis of his future employ-

ment; the seaman is therefore advised to keep the same carefully and to conduct himself so that his record will be found satisfactory for future service.

If this certificate is lost or stolen a duplicate will be furnished upon the proper presentation at the Employment Service Bureau.

If this Certificate is found by any person the same should be returned to the Employment Service Bureau.

PACIFIC AMERICAN STEAMSHIP ASSOCIATION,
SHIPOWNERS ASSN OF THE PACIFIC COAST,
By W. J. PETERSON,
General Manager.

To MASTERS.

When a seaman joins your vessel, he will have this book and a card assigning him to your vessel; take up this book and retain it until the seaman is discharged or quits the vessel. When the seaman is discharged or quits the employment make out a report in this book of his rating, conduct and efficiency and return the book to him. If the seaman deserts write a reports of the facts in this book and return the same to the Employment Service Bureau.

To SEAMAN.

When you receive this book you will be given a registered number which will be placed in the back of this book. When you leave your ship you must report to the Employment Service Bureau and get a new registered number. The registration number is given you when you apply for a job and has nothing to do with the number printed on the book * * *."

The fee for the book is twenty-five cents, each seaman also being required to have written thereon the date and place of his birth, his age, his height, his

weight, the color of his hair and eyes, his complexion, his rating, the total of his sea experience, his previous employment, and his photograph is also required, but not insisted on.

That each seaman is required to take his turn for employment, according to number, which stifles the desire for improvement.

That the method of obtaining employment is: A seaman must first obtain the continuous discharge book, then register his name for an employment turn; he is then given a card to the ship upon which is printed among other things,

> "* * * *But he must not be employed on your ship in any capacity* unless he presents an Assignment Card, *grey in color,* issued by us" * * *.

The card, grey in color, reading in part:

> "To Captain of S. S. (name of steam vessel). Lying at (place where vessel is lying). In response to an order *we are assigning* (name of person assigned) in the capacity of" (capacity here inserted).

The said book is delivered by the seaman to the master, and upon the back thereof is a blank for a report as to the seaman's qualifications, with instructions to the master to fill out and return to respondents' office when the seaman is discharged or quits, but not to give it to the seaman.

That on the 15th day of June, 1925, plaintiff applied to respondents' office for registration for employment without a continuous discharge book and registration and was refused; that on the 18th of June, he ob-

tained employment as a sailor on a vessel engaged in the coasting trade between the states of California and Washington, and received a note from the mate of said vessel—it being alleged in the complaint, that the mates of said vessels are the executive officers, and work the men, and prior to the establishment of defendants' office always engaged the men—the note reading:

> "Please send bearer C. Anderson to S. S. 'Caddopeak'
>
> A. J. Rundberg
>
> Mate."

With instructions from said mate to take it to respondents' office for assignment, which plaintiff did, and was then refused assignment on the ground that he could not be employed on the "Caddopeak" at all; that they had too many men around their office now. That thereafter and on the same day plaintiff met said mate on a street and was told to report for work on board at 1 p. m., which he did, whereupon the port captain of the owner of the "Caddopeak", who had authority in the premises, told the mate to employ no one except through respondents' office, and plaintiff and another sailor at the same time lost their employment, plaintiff's damage being $135.00. The prayer of the complaint being that that be trebled and for an attorney's fee and costs.

It is also alleged that Congress has legislated upon all such matters and no seaman can get work without obeying such rules, and the enforcement of such rules has driven large numbers of the best seamen from their calling; that such rules destroy freedom of con-

tract, competition among the seamen, the right of a seaman to select his own ship, and the master of the ship to select the men he has to depend upon to do the work on the ship he commands and that seamen are entirely subservient to the will of respondents who neither employ or pay them, and that the said rules trench upon the exclusive right of Congress to legislate upon such matters.

All of which is the fact in practice and is necessarily admitted by the motion to dismiss.

The learned Circuit Court of Appeals held, (Tr. pp. 42, 46), that the amount involved was insufficient to give a United States Court jurisdiction. Although Section 7 of the Sherman Act reads, that such Courts have jurisdiction, "without respect to the amount in controversy", and also held (Tr. p. 45):

> "It is not alleged that the purpose of the practice complained of is the restraint of interstate or foreign commerce."

It is clearly so alleged (Par. VII of Complaint, Tr. p. 4; Par. XI of Complaint, Tr. p. 11). But such an allegation is unnecessary if all the facts of the complaint show such a restraint. And they do.

GENERAL REASONS RELIED ON FOR THE ISSUANCE OF THE WRIT.

We believe petitioner is entitled to a ruling from the highest Court in the land upon the several questions involved herein as several of such questions are both legally and economically fundamental, and there-

fore public. No one will dispute that society demands that every one within it shall provide himself with necessities and not become a charge upon it. We contend, therefore, the utmost freedom in so doing should be allowed and that it is the duty of society to protect each person within it in obeying that demand and prevent any person from being required to do more than the law requires him to do in his efforts in obeying its mandates. The law is plain as to what a seaman shall do in obtaining necessities while following his calling. We do not believe that any combination of persons have the right to supplement what the law provides, no matter what one person may do of himself, nor do we believe that any combination of persons have the right in interstate and/or foreign commerce to create a monopoly and surrender the control of their business to a central body, but that it is their duty to compete in all things, and we believe it is fundamentally wrong to force any person to obey the commands of a central body that neither employs or pays him, or that destroys his freedom of contract to select his own employer and place of employment, or to serve under agents of an employer selected for him by someone else whether he wishes to or not, as the rules of respondent do. We believe it is equally fundamentally wrong to force the agents, viz., the officers of a vessel, to take seamen that they have to command and carry out their duties with whether they wish to or not, and thus destroy the right of selection of the agencies with which their own duties are to be performed. In other words, in all callings, particularly a calling as hazardous as

that of the sea, the men who do the work should have the right to say who shall command them and who they will sail with, and the officers of vessels, all licensed and whose licenses and consequently livelihood are always at stake, together with the lives of all, should have the right of selecting their own men and say who shall work under them. All of which is prevented by respondents' rules, as appears by the assignment card, Tr. p. 8, which reads in part: "We are assigning", Tr. p. 10, addressed to the master of the vessel, "Mr..... is assigned to (department) as..... But he must not be employed etc." * * * "to which *we* have assigned him". And we further believe that open competition in obtaining employment should be present in all callings, which is utterly destroyed by respondents' system of taking turns for employment. We further believe that all of respondents' rules cannot fail to be prejudicial to the business concerned and therefore the general public. Being fundamentally wrong the foregoing matters must be legally wrong, and the Constitution places the whole matter with Congress as we will hereafter show.

As to the decision of the learned Circuit Court of Appeals herein, we submit it is legally wrong on the questions on which it passed as follows:

The learned Circuit Court of Appeals decided that the amount of $135.00 was not sufficient to vest a Federal Court with jurisdiction, it saying, Tr. p. 46:

> "If plaintiff has a cause of action it is not cognizable in the federal courts."

It will be observed that it does not dispute that there is a cause of action, but decided the case on lack of jurisdictional amount. The law is as follows, in addition to the sections quoted in the opinion, Tr. pp. 44, 45.

Section 7 of the Sherman Act, 26 Stat. 210:

> "Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue in any circuit court of the United States in the district in which the defendant resides or is found, *without respect to the amount of controversy*, and shall recover three fold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

After quoting paragraphs 8 and 23 of Section 24 of the Judicial Code, on Tr. p. 44, and also Section 16 of the Clayton Act, each of which paragraphs of Section 24 are within the following language of said Section 24:

> "*Provided, however,* That the foregoing provision as to the sum or value of the matter in controversy shall not be construed to apply to any of the cases mentioned in the succeeding paragraphs of this section."

The learned Circuit Court of Appeals says, Tr. p. 45:

> "It is not alleged that the purpose of the practice complained of is the restraint of interstate or foreign commerce."

That of course would not be necessary, if the facts pleaded show it, and they do, and this Court held in

Grand Trunk Ry. Co. v. Lindsay, 233 U. S. 42, 48,

that a similar contention was unsound, and had been foreclosed by

Seaboard Airline Ry. Co. v. Duval, 225 U. S. 477, 478.

It is elementary that all the pleader has to do is to plead the facts, and the court is presumed to know whether such facts are covered by any law, and the above learned Circuit Court of Appeals so held on October 19, 1925, in

Luckenbach S. S. Co. v. Campbell, 3 Fed. (2nd Ser.) 223, 224,

saying:

> "There seems to be some contention that no reference was made in the libel to any statute, but this is wholly unnecessary. The pleader must plead his facts, and, when he does so, he may invoke the protection of the common law, or of any applicable statute."

The complaint herein, however, does allege the purpose, contrary to what the learned Circuit Court of Appeals found. See Paragraph VII, Tr. pp. 4 and 5 and Paragraph XI, Tr. p. 11. Plaintiff also prays for treble damages and a reasonable attorney's fee. (Tr. p. 17.)

Paragraph XVIII, Tr. p. 16, alleges that the vessels controlled by defendants are engaged in different trades, and some men are better suited for one trade than another, and that the officers of such vessels are deprived of the opportunity of selecting their own men and those most suitable for the trade they are engaged in, and that defendants supply all of the men on the 300 or more vessels they control, and it is al-

leged in paragraph XVI that prior to the advent of defendants mates always did that, as they were the executive officers and worked such men.

We submit that that is all a matter of public importance.

This Court held in

Missouri Pacific Railway Co. v. Stroud, 267 N. Y. 404, 408:

> "It is elementary and well settled that there can be no divided authority over interstate commerce, and that the acts of Congress on that subject are supreme and exclusive."

Congress has provided a complete scheme for the supplying, shipment and discharge of seamen, as will hereafter appear. The learned Circuit Court of Appeals, however, says in effect (Tr. p. 46) that if the contract is entered into before the shipping commissioner, that is all that is necessary.

The purpose of the laws on the subject is, as this Court said in

Patterson v. Bark Eudora, 190 U. S. 168:

> "Contracts with sailors for their services are, as we have seen, exceptional in their character, and may be subjected to special restrictions for the purpose of securing the full and safe carrying on of commerce on the water.
>
> Being so subject, whenever the contract is for employment in commerce not wholly within the State, legislation enforcing such restrictions comes within the domain of Congress, which is charged with the duty of *protecting foreign and interstate commerce.*"

Congress has legislated as follows (Sec. 4508, Revised Statutes):

> "The general duties of a shipping commissioner shall be:
>
> First. To afford facilities for engaging seamen by keeping a register of their names and characters."

Respondents divide that duty with Congress. Their rules say (Tr. p. 6):

> "and no person will be employed by these associations unless he is registered at their offices and has in his possession this certificate and discharge."

It must be conclusively presumed that Congress thought that the previous registration before the Shipping Commissioner was just as important as the final execution of the contract, and that it was necessary to

> "the full and safe carrying on of commerce on the water".

And that the certificate of discharge in the form provided by law and its issuance by the Shipping Commissioner was just as indispensable.

It has provided for such discharge in Section 4551 of the Revised Statutes, and the form of the discharge is given in Section 4612 and Section 4508 says in the second paragraph:

> "Second. To superintend their engagement and discharge, in the manner prescribed by law."

The learned Circuit Court of Appeals, though, says that the engagement before the Commissioner is all that is necessary. Congress has prescribed the form of discharge. Respondents, however, say (Tr. p. 6):

"This certificate and discharge is issued under the *authority* of the Pacific American Steamship Association and the Shipowners Association of the Pacific Coast."

If that is not a division of authority, it is impossible to conceive what would be.

Congress has legislated, as above, in paragraph first, that the Shipping Commissioner shall afford facilities for engaging seamen by keeping a register of their names and characters".

Respondents keep a register of the names and characters also and their register and form is found on Tr. pp. 8 and 9. The seaman is not permitted to see that, hence it affords a perfect system for blacklisting, and petitioner has been blacklisted herein by being denied employment without respondents' discharge book. That is in conflict with legislation by Congress.

All of those things are a restraint on a man's right to earn the living society commands him to earn, and are also necessarily a restraint on the right to freely engage in interstate and foreign commerce, and as the restraint applies to the whole of the seamen, the restraint affects the whole of the commerce affected.

Congress intended the provisions relating to the supplying of seamen which precedes the signing of the contract to be exclusive, and have in effect said so in the following sections of the Revised Statutes:

In Section 4507 it requires the Secretary of Commerce to provide an office for the Shipping Commissioner.

In Section 4515 it has provided that if any seaman shall be received, accepted or be carried to sea engaged *or supplied* contrary to the provisions of this title, the vessel should be liable to a penalty of not more than two hundred dollars.

All of the rules of respondents are contrary to the provisions of the title above referred to.

The learned Circuit Court of Appeals, however, says that they are not, on Tr. p. 46, and is further in error in stating as it does that Section 4551 "is preliminary to the execution of the form of the contract". That section relates entirely to the discharge of the seaman, after the service is performed.

Petitioner and those on whose behalf he sues are interfered with in their right to engage in interstate and foreign commerce. Respondents have a monopoly, and do not deny it. They *supply* all of the seamen, and there can be no question this case is within the terms of both the Sherman and Clayton Acts, and respondents' combination is within the language of *Hilton v. Eckersley*, cited and quoted from in our brief attached hereto, in which it was held that a combination of employers such as this are "restraints of trade not capable of enforcement".

If such a combination was a restrain at common law, it is clearly a restraint under the Sherman and Clayton Acts, which are but statutory enactments applicable to interstate and foreign commerce of what the common law was. And any act that requires a person to do more than the law requires must be a restraint upon the subject it operates on.

If a state passed laws in the same terms as respondents rule, they would be held unconstitutional, and this Court held in

Loewe v. Lawlor, 208 U. S. 303, 304:

> "If a state, with its recognized powers of sovereignty, is impotent to obstruct interstate commerce, can it be that any mere voluntary association of individuals within the limits of that state has a power which the state itself does not possess."

And it has been held over and over again that the above Sherman and Clayton Acts, apply to all classes, the last expression of opinion that we can find being that of

Candell et al. v. U. S., 6 Fed. 2nd Ser.) 188,

in which members of a labor union were indicted, and the Court held specifically that the Sherman Act applied to all classes, and this Court has so held repeatedly.

In the *Tillbury* case, cited in opinion herein, there was no question of any statutes being violated, and in the *Street* case, 299 Fed. 5, both decisions being by the same Court, the Court held that:

> "There is no allegation in the complaint that plaintiff has ever applied for employment and been refused, and no allegation that plaintiff has ever suffered or will suffer loss or damage by reason of the regulations or acts of the defendants."

That has all been supplied in the complaint herein. The Court also found in that case that there was no allegation of discrimination. The complaint herein shows that respondent was discriminated against be-

cause he had no discharge book, and lost a property right in his employment by reason of that fact.

The Court in that (*Street*) case also cited the case of *McCabe v. Atchison, Topeka & Santa Fe Ry. Co.,* 235 U. S. 152, 162. The gist of that opinion is, that McCabe had never been injured and might never be, this Court saying:

> "The complainant must present facts sufficient to show that his individual need required the remedy for which he asks."

This complaint does show that respondent has individual needs.

We respectfully submit, that it is optional with any person whether he waits his turn at a theater or post office or not, and there is always another he can go to, that bread lines are very infrequent, and there is no room for the analogy made of such matters with the compulsory matter of awaiting turns to earn a livelihood as made in the *Street* case, and that this Court simply held in that case that the Constitutional questions involved were not sufficient to vest this Court with jurisdiction on a direct appeal, as the law was at that time.

And we respectfully submit that anything that interferes with any person's freedom to engage directly or create a monopoly in interstate and foreign commerce affairs, is a restraint upon such commerce, the interference and monopoly is direct in this case. Manufacture or mining is not interstate commerce of itself, and that is all this Court has ever held. When the products begin to move in such commerce, it be-

comes interstate or foreign commerce but not until then. What occurs in this case is interference with the whole of one of the instrumentalities of commerce, without which instrumentality no vessel can be moved, it is thus clearly direct.

We respectfully submit, that the decision herein is against all the law on the question of jurisdiction, that the questions are of public importance, that the complaint shows a violation of both the Sherman and Clayton Acts, that the petitioner being as an alien had the right in this case to appeal to the federal courts, without respect to the amount in controversy, and we respectfully refer to our brief attached hereto and pray that a writ of certiorari be granted.

Dated, San Francisco,
February 18, 1926.

H. W. HUTTON,
Attorney for Petitioner.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI to the United States Circuit Court of Appeals for the Ninth Circuit.

The contentions of the petitioner are as follows:

(a) The whole of commerce by sea is restrained.

(b) Petitioner as an alien can maintain this action.

(c) The combination of the respondents herein is a monopoly.

(d) Such monopoly is being used to enforce the above mentioned rules and regulations.

(e) Petitioner's right to a free market for his labor is interfered with by the defendants.

(f) Petitioner was entitled to injunctive relief.

(g) The rules and regulations are regulations of commerce, which only the Congress of the United States has the power to make.

(a)

THE WHOLE OF COMMERCE BY SEA IS RESTRAINED.

This Court held in the case of

The Passenger cases, 7 Howard 232, 407:

> "The officers and crew of the vessel are as much the instruments of commerce as the ship," * * *

All carriage commerce is effected through the men, the animate, and the vessels or cars, the inanimate parts; if the whole of one, the animate part, is re-

strained or impeded, it would seem that the whole of commerce is restrained or impeded just as much as if the vessels, the whole of the inanimate part was restrained or impeded, as an interference with the whole of one of the essential parts, is necessarily an interference with the whole scheme.

And if the taking of turns, or equality of opportunity puts the man possessed of superior qualifications on the same plane as one of inferior qualifications, as it does, then there is no incentive to possess superior qualifications, or advance in the calling, and the whole economic scheme is bound to retrogress in skill and ability. Competition is essential to advancement, and advancement in skill and ability is peculiarly necessary in ocean commerce as the safety of life and property at sea depend upon it, and the destruction of the freedom of contract of one part of commerce is an interference with the whole thereof.

(b)

PETITIONER AS AN ALIEN CAN MAINTAIN THIS ACTION.

Plaintiff alleges (Tr. p. 2) that he declared his intentions to become a citizen of the United States more than four years ago, and has been employed for more than twenty years as a seaman, sailor, on American vessels, and Section Eighth of the Naturalization Act of June 29th, 1906, as frequently amended now reads in part:

> "Eighth. That every seaman, being an alien shall, after his declaration of intention to become

a citizen of the United States, and after he shall have served three years upon such merchant or fishing vessels of the United States, be deemed a citizen of the United States for the purpose of serving on board any such merchant or fishing vessel of the United States, anything to the contrary in any act of Congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such after filing his declaration of intention to become such citizen; * * *"

The anti-trust laws also apply to aliens.

(c)

THE COMBINATION OF THE RESPONDENTS HEREIN IS A MONOPOLY.

The allegations of the complaint show that every vessel flying the American Flag, and plying to and from ports on the Pacific Coast and engaged in interstate and foreign commerce is operated by respondents or their members. That shows without peradventure of a doubt, that respondents' combination is a monopoly.

(d)

SUCH MONOPOLY IS BEING USED TO ENFORCE THE ABOVE MENTIONED RULES AND REGULATIONS.

The complaint shows that.

(e)

PETITIONER'S RIGHT TO A FREE MARKET FOR HIS LABOR IS INTERFERED WITH BY THE RESPONDENTS.

Every person has a right to a free market for his labor.

Hundley v. Louisville & Nashville R. Co., 105 Ky. 164-165.

> "Every person *sui juris* is entitled to pursue any lawful occupation, or calling. It is a part of his civil rights to do so. He is as much entitled to pursue his trade, occupation, or calling and be protected in it as is the citizen in his life, liberty and property."

We concede that respondents and each of its members have an equal right with petitioner. No one of respondents or their members could be compelled without these rules to hire or employ any person. The rules compel them to, however. No one of respondents could be compelled in the absence of such rules to hire Cornelius Anderson, the petitioner, but no one of the respondents or their members have any right to have anything to say about how or in what manner said Anderson should be employed by any other respondent or any other member. When they do so, as they do herein, petitioner's rights are invaded, and he has a cause of action.

This Court said in

Eastern States Lumber Ass'n. v. U. S., 234 U. S. 600,

> "An act harmless when done by one may become a public wrong when done by many acting in concert, for *it then takes on the form of con-*

> *spiracy* and may be prohibited or punished, if the result be hurtful to the public *or to the individual against whom the concerted action be directed.*"

In this case appellees have combined together in the matter of hiring their men, necessarily one member of appellees surrenders his right to select a particular man, and surrenders his will in all the matters relating to the hiring of seamen to the will of the majority. *That has uniformly been held to be against public policy,* as, if permitted, it would only be a question of time when such combination would be able to promulgate rules that would reduce workingmen to a condition of peonage.

A similar matter came up in the case of *Hilton v. Eckersley*, 6 Ellis & Blackburn 47, in which case all of the master cotton spinners in Wigan, County of Lancaster, combined together and each executed a bond, a part of the conditions of which were as follows:

> "and therefore the said several obligors have agreed to carry on their said works, in regard to the amount of wages to be paid to persons employed therein, and the times or periods of the engagement of work people, and the hours of work, and the suspending of work, and the general discipline and management of their said works and establishment in conformity to law."

One of the combination violated the agreement and upon being sued on the bond pleaded that there was no consideration for the execution of the bond and that the bond was in restraint of trade, illegal and void.

The case first came up in the Court of Queen's Bench, where the bond was held illegal and against public policy. It then went to the Exchequer Chamber, where the judgment was affirmed, Lord Alderson saying on page 74:

> "Secondly, they can only employ persons for such times and periods as the majority may fix on, however much the minority may deem it for their own interest to do otherwise. The hours of work, the suspending of work, partially or altogether, the discipline and management of their establishments, is to be regulated by others forming a majority, and taken from every individual member. And all this for a fixed period of twelve months. All these are surely regulations restraining each man's power of carrying on his trade according to his discretion, for his own best advantage, and therefore are restraints of trade not capable of being enforced."

Any man who can not earn a living at his calling except by obeying rules and regulations of an illegal body, is deprived of his property right to earn a living without due process of law.

Curran v. Galen, 152 New York 33, 37.

> "Public policy and the interests of society favor the utmost freedom in the citizen to pursue his lawful trade or calling, and if the purpose of an organization or combination of workingmen be to hamper, or to restrict, that freedom, and *through contracts or arrangements with employers* to coerce other workingmen to become members of the organization and to come under its rules and conditions, under the penalty of the loss of their position, and of deprivation of employment, then that purpose seems clearly unlawful and militates against the spirit of our government and the nature of our institutions. The effectuation of

such a purpose would conflict with the principles of public policy, which prohibits monopolies and exclusive privileges. *It would tend to deprive the public of the services of men in useful employments and capacities.* It would, to use the language of Mr. Justice Barrett in People ex rel. Gill v. Smith (5 N. Y. Cr. Rep. at p. 513), *'impoverish and crush a citizen for no reason connected in the slightest degree with the advancement of wages, or the maintenance of the rate.'*

Every citizen is deeply interested in the strict maintenance of *the constitutional right freely to pursue a lawful avocation* under conditions equal to all, and to enjoy the fruits of his labor, *without the imposition of any conditions not required for the general welfare of the community.''*

Plant v. Wood, 176 Mass. 492-498.

"Everyone has a right to enjoy the fruits and advantages of his own enterprise, industry, skill and credit. He has no right to be protected against competition; *but he has a right to be free from malicious and wanton interference, disturbance or annoyance.* If disturbance or loss * * * come from the merely wanton or malicious acts of others, without the justification of competition or the service of any interest or lawful purpose, it then stands on a different footing."

There is no difference in principle between this case and that of *The Mogul Steamship Company, Limited, v. McGregor et al.,* 23 Queen's Bench (1889) 598.

In that case several steamship companies had combined together to control the carrying trade of tea from Hankow and Shanghai to England. The Mogul Steamship Company was refused admittance into the agreement, and thereupon sent two steamers to Hankow in order to obtain freights independently; thereupon the combination lowered freight rates to such a

figure that it was impossible to carry at a profit, for the purpose of forcing plaintiff out of that business. The question of the right of plaintiff in that case to use their steamers in business was the question involved, and the learned Court, speaking through the very able and distinguished Lord Esher, says as follows:

Page 603.

> "It seems to me well to consider first what view the law takes of the agreement of April 7, 1884, renewed or enlarged in 1885. In Hilton v. Eckersley (4) a bond was executed by certain masters, by which they agreed to be bound to each other in a penalty, nominally payable to one of them, if any of them should carry on his works, in regard to amount of wages to be paid to persons employed therein, and as to the times or periods of the engagement of workpeople and the hours of work otherwise than in conformity with the resolutions of the majority of the said masters. The defendant, one of the signing masters, carried on his works contrary to a resolution of the others, whereupon he was sued on the bond for the penalty. Crompton, J., said: 'I am of the opinion that the bond is void, as being against public policy. I think that combinations like that disclosed in the pleadings in this case were illegal and indictable at common law, as tending directly to impede with the free course of trade and manufacture'."

The combination of defendants in this case is squarely within what was there declared was against public policy. In the Court of Exchequer Chamber, Lord Alderson said, quoted on the above mentioned page of 23 Queen's Bench Division,

> "that the fact of the combination of masters being formed to counteract a combination of workmen cannot render the master's combination legal."

Page 605.

> "But before considering that point it must be observed that the agreements held to be illegal because in restraint of trade must have been so held, not because there was any wrong done to the traders who agreed,—for they all agreed to what was done—but because there was a wrong to the public. The restraining themselves from a free course of trade was held to be wrong to the public. If that be so when parties agreed to restrain themselves, it must be much more so when they agree to do acts which will restrain and are intended to restrain another trader from a free course of trade. That restraint is equally a wrong to the public. The present agreement is therefore illegal and void as in restraint of trade on that ground also."

In the case at bar, the combination of the different employers means that no one shall have the right to select his own employees; he must take them by the numbers as the men apply; there is a restraint on the employer in this case and necessarily a restraint upon the employee. On page 607, 22 Queen's Bench (1889), Lord Esher further proceeds:

> "At common law," says Sir W. Erle (page 6), "every person has individually, and the public also have collectively, a right to require that the course of trade should be kept free from unreasonable obstruction." "Every person has a right under the law, as between him and his fellow-subjects *to full freedom in disposing of his own labour* or his own capital *according to his own will*. It follows that every other person is subject to the correlative duty arising therefrom, and is prohibited from any obstruction to the fullest exercise of this right which can be made compatible with the exercise of similar rights by others. Every act causing an obstruction to another in the exercise of the right comprised within this description—done, not in the exercise of the

> actor's own right, but for the purpose of obstruction—could, if damage should be caused thereby to the party obstructed, be a violation of this prohibition; and the violation of this prohibition by a single person is a wrong, to be remedied either by action or indictment, as the case may be. It is equally a wrong whether it be done by one or many—subject to this observation, that a combination of many to do a wrong, in a matter where the public has an interest, is a substantive offense of conspiracy."

The appeal was not allowed in that case, but the principles announced in Lord Esher's opinion are unquestionably the law as the following will show.

Erdman v. Mitchell, 207 Pa. St. 79,

> "The right to the free use of his hands is the workman's property, as much as the rich man's right to the undisturbed income from his factory, houses and lands. By his work he earns present subsistence for himself and family. His savings may result in accumulations which will make him as rich in houses and lands as his employer. This right of acquiring property is an inherent indefeasible right of the workman. To exercise it, he must have the unrestricted privilege of working for such employer as he chooses, at such wages as he chooses to accept. This is one of the rights guaranteed him by our Declaration of Rights. It is a right of which the legislature cannot deprive him, one which the law of no trades union can take away from him, and one which it is the bounden duty of the courts to protect."

Berry v. Donovan, 188 Mass. 353, 355-366,

> "The right to dispose of one's labor as he will, and to have the benefit of one's lawful contract, is incident to the freedom of the individual, which lies at the foundation of the government in all countries that maintain the principles of civil liberty. Such a right can be lawfully interfered

with only by one acting in the exercise of an equal or superior right which comes in conflict with the other. An interference with such a right, without lawful justification, is malicious at law even if it is from good motives and without express malice.'

Jones v. Leslie, 61 Wash. 107, 110,

"It would be well to remember, in the beginning, that it is fundamental that a man has a right to be protected in his property. This was the doctrine of the common law; is, and always has been, the law in every civilized nation. It is, of necessity, one of the fundamental principles of government, the protection of property being largely one of the objects of government. For the protection of life, liberty, and property, men have yielded up their natural rights and established governments. Is, then, the right of employment in a laboring man property? That it is, we think cannot be questioned. The property of the capitalist is his gold and silver, his bonds, credit, etc., for in these he makes his living. For the same reason, the property of the merchant is his goods. And every man's trade or profession is his property, because it is his means of livelihood; because, through its agency he maintains himself and family, and is enabled to add his share towards the expenses of maintaining the government. Can it be said, with any degree of sense or justice, that the property which a man has in his labor, which is the foundation of all property and which is the only capital of so large a majority of the citizens of our country, is not property; or, at least, not that character of property which can demand the boon of protection from the government? We think not. To destroy this property, or to prevent one from contracting or exchanging it for the necessities of life, is not only an invasion on a private right, but is an injury to the public, for it tends to pauperism and crime. This relief has been granted to employers in many forms."

That is a case where an employee sued a former employer.

People v. McFarlin, 89 N. Y. Supp. 527,

"A calling, business or profession chosen to follow is property."

State v. Chapman, 55 Atlantic 94,

"Labor is property and as such merits protection. The right to make it available is next in importance to the right to life and liberty."

Slaughter House Cases, 16 Wallace 36, 127,

"The right to operate vessels and to conduct business is as much property as are the vessels themselves. All the rights which are incident to the use, enjoyment, and disposition of tangible things are property. Property is everything that has an interchangeable value." Mr. Justice Swayne in the Slaughterhouse Cases, 16 Wall. 127, L. Ed. 894, "Property may be destroyed, or its value eliminated. It is owned and kept for some useful purpose, and it has no value unless it can be used. In re Jacobs, 98 N. Y. 105."

Sailors Union of the Pacific v. Hammond Lumber Co., 156 Fed. 454;

Gleason v. Thaw, (C. C. A. 3rd Cir.) 185 Fed. 345, 347,

"Thus—man's right to labor, to carry on a lawful business, or to practice a lawful profession, may not be taken away from him *or be restricted* by any act of the state not within its police powers, *such act being considered as a deprivation of property within the constitutional inhibition, federal or state.* Such combination or conspiracy to destroy or prevent the carrying on of the business of any person within the protection of law *may be enjoined as a threatened trespass upon a property right. * * * The right to labor in any calling or profession in the future*

may be considered a property right, for the purpose of protection, * * *. We must not allow ourselves, by a subtle verbal casuistry, to confuse a concept of the right to work or render service with the service itself when it has been rendered. *The right to render labor or service is one thing; the service itself quite a different thing.* * * *"

In

Ritchie v. People, 155 Ill. 98, 40 N. E. 454, 29 L. R. A. 79, 46 Am. St. Rep. 315,

"the court held a statute of the state prohibiting the employment of females in any factory for more than eight hours a day unconstitutional, on the ground that the right to labor and employ labor is a property right, of which the citizen cannot be deprived without due process of law."

The same was said in

Gillespie v. People, 188 Ill. 176, 58 N. E. 1007, 52 L. R. A. 283, 80 Am. St. Rep. 176:

"There a law making it criminal for an employer to attempt to prevent his employees from joining labor unions, or to discharge them because of their connection with labor unions, was held unconstitutional, as being in contravention of the guaranty that no person shall be deprived of life, liberty or property without due process of law."

In this case we have a combination that imposes rules that are oppressive and calculated to and do restrain the freedom of the employee, just as the state statute restrains the freedom of the employer in the cases above cited; in those cases it was a statute, but we will show later on, that what a state cannot do an individual or combination of individuals cannot.

(f)

PETITIONER WAS ENTITLED TO INJUNCTIVE RELIEF.

Petitioner has a right to engage in interstate and foreign commerce solely under the provisions of the Shipping Commissioners Act, and petitioner having a property right in his right to labor, an unauthorized restriction thereon is a taking of his property without due process of law, he being engaged in interstate and foreign commerce, his rights are given by Section 16 of the Act of October 15, 1914, which reads:

> "That any *person*, firm, corporation, *or association* shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, *against threatened* loss or damage by a violation of the anti-trust laws. * * *"

The amount of the loss is immaterial under that language, Clause Fifth of Section 24 of the Judiciary Act.

Gable v. Vobbegut Shoe Mach. Co., 274 Fed. 66 (syllabus):

> "Though under the Clayton Act, Sec. 16, 19 Comp. Statutes, etc., a private party may maintain a suit to enjoin acts interfering with interstate commerce, the requirement being that the acts complained of must be immediately directed against interstate commerce."

Duplex v. Deering, 254 U. S. 443, 464,

> "The Clayton Act, in Sec. 1 includes the Sherman Act in a definition of anti-trust laws and in Sec. 16 (38 Stat. 738) *gives to private parties a right to relief by injunction in any court of the United States against threatened loss or damage by a violation of the anti-trust laws* under the

conditions and principles regulating the granting of such relief by courts of equity."

Atkins v. W. A. Fletcher Co., 65 N. J. Eq. 658, 666,

"What a court of equity will protect by an injunction in a proper case are the rights of the two parties dually interested in the conflict W. A. Fletcher Company and their employes—the right of one to employ *and the right of the other to be employed; the right of both to have a free labor market where an opportunity to make a living depends.*"

Labatt on Master & Servant, 2nd Edition, Section 2691,

"An injunction may be granted against threatened interference by unlawful means with one's existing employment, *or against the commission of acts tending unlawfully to interfere with the obtaining of employment by complainant*, where there is reason to believe that continued interference is contemplated."

(g)

THE RULES AND REGULATIONS ARE REGULATIONS OF COMMERCE, WHICH ONLY THE CONGRESS HAS THE POWER TO MAKE.

Respondents are common carriers, and it is their duty to compete in all matters relating to the business. A man has as much right to go to sea in interstate and foreign commerce as another has to run a ship therein—one cannot engage in such business without the other. This Court said in

The Lottawanan, 21 Wallace 558, 578:

> "The scope of the maritime law, and that of commercial regulation are not coterminous, it is true, but the latter embraces much the largest part of ground covered by the former. Under it Congress has regulated the registry, enrollment, license, and nationality of ships and vessels; the method of recording bills of sale and mortgages thereon; *the rights and duties of seamen;* the limitations of the responsibility of shipowners for the negligence and misconduct of their captains and crews; and many other things of a character truly maritime * * *. Ships or vessels of the United States are creatures of the legislation of Congress. * * *"

Page 573:

> "Congress having created, as it were, this species of property and conferred upon it its chief value under the power given in the constitution to regulate commerce, we perceive no reason for entertaining any serious doubt but that this power may be extended to the security and protection of the rights and titles of all persons dealing therein."

The rights and duties of seamen are a matter for Congressional legislation alone, it has the exclusive power to pass regulations of interstate and foreign commerce. The powers given to Congress are found in Section 8 of Art. 1 of the Constitution. Clause 3 of that section reads:

> "To regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

It has been uniformly held that that power is exclusive, Congress has the right to legislate on matters relating to seamen.

The Troop, 117 Fed. 557;
Kenney v. Blake, 125 Id. 672,

and has done so in the matters involved herein in the Shipping Commissioners' Act, with its various amendments, that act was taken almost verbatim from the British Merchant Shipping Act, in which the duties of a Shipping Master are given to the Shipping Commissioner, and the law is as follows:

When first passed the matter of regulating the shipment and discharge of merchant seamen was vested in the Circuit Courts of the United States. Its judges appointed the Shipping Commissioner, and Section 4501 of the Revised Statutes then read:

> "Such courts shall regulate the mode of conducting business in the shipping office to be established by the shipping commissioners as hereinafter provided; and shall have full and complete control over the same, subject to the provisions herein contained."

The matter was taken out of the hands of the Circuit Court in 1884 and given to the Secretary of the Treasury, then went from him to the Secretary of Commerce and Labor and from him to the Secretary of Commerce where it now is.

Section 4507 of the Revised Statutes now reads:

> "The Secretary of Commerce shall assign in public buildings or otherwise procure suitable offices and rooms for the *shipment and discharge of seamen*, to be known as the Shipping Commissioners office, and shall procure furniture, stationery, printing and other requisites for the transaction of the business of such office."

The following sections show that defendants are doing the very thing Congress says the Shipping Commissioner shall do, to-wit:

They have established an office for the supplying of seamen and there do what is provided for as follows; Section 4508 Revised Statutes reads:

> "The general duties of a shipping commissioner shall be:
>
> First. To afford facilities for engaging seamen by keeping a register of their names and characters.
>
> Second. To superintend their engagement and discharge, in manner prescribed by law.
>
> Third. To provide means for securing the presence on board at the proper times of men so engaged.
>
> Fourth. To facilitate the making of apprenticeships to the sea service.
>
> Fifth. To perform such other duties relating to merchant seamen or merchant ships as are now or may hereafter be required by law."

Section 4612 gives the form of contract a seaman must sign, which also sets forth the kinds and quantity of food he shall receive, and the following particulars are required to be thereon, to-wit:

The birthplace, age, height, complexion, color of hair, wages, allotment, etc.

Section 4551 of the Revised Statues reads:

> "Upon the discharge of any seaman, or upon the payment of his wages, the master shall sign and give him a certificate of his discharge, specifying the period of his service and the time and place of his discharge, in the form marked Table B in the schedule attached to this Title;

> and every master who fails to sign and give to such seaman such certificate and discharge, shall for each offense, incur a penalty not exceeding fifty dollars. But whenever the master shall discharge his crew or any part thereof in any collection district where no shipping commissioner has been appointed, he may perform for himself the duties of such commissioner."

The certificate of discharge is a part of Section 4612, and upon such certificate of discharge there is required to be the following matters, to-wit:

> "Name and official number of ship, Port of registry, Tonnage, Description of voyage or employment, Name of Seaman, Place of Birth, Date of birth, Character, Declines to give statement of Character, Capacity, Date of entry, Date of discharge, Place of discharge."

To those matters which Congress has prescribed, defendants have added, date of birth, weight, the color of the eyes, his complexion, the total years of sea experience, his previous experience and employer, and the requirement that the photograph shall be attached thereto.

The Congressional scheme as to the discharge is that the Shipping Commissioner shall give the seaman a discharge, which of course the master of another vessel that the seaman seeks employment on may demand inspection of, the scheme of employment and discharge is complete.

However, defendants are undertaking to and do supply all of the seamen employed in interstate and foreign commerce on the Pacific Coast, in direct violation of the provisions of the Revised Statutes and

they are subject to the penalties of the following sections of the Revised Statutes in so doing, to-wit:

> 4514. "If any person shall be carried to sea, as one of the crew on board any vessel making a voyage as hereinbefore specified, without entering into an agreement with the master of said vessel in the form and manner, and at the place and time in such cases required, the vessel shall be held liable for each such offense to a penalty of not more than two hundred dollars. * * *"
>
> 4515. "If any master, mate or other officer of a vessel knowingly receives, or accepts, to be entered on board of any merchant vessel any seaman who has been *engaged or supplied* contrary to the provisions of this Title, the vessel on board of which such seaman shall be found, shall, for every such seaman, be liable to a penalty of not more than two hundred dollars."

These two sections make the supplying of seamen by the Shipping Commissioner *exclusive;* the language is as clear as it is possible to make it.

In

Loewe v. Lawlor, 208 U. S. 303-4,

this Court said:

> "It is curious to note the fact that in a large proportion of the cases in respect to interstate commerce brought to this court the question presented was of the validity of state legislation in its bearing upon interstate commerce, and the uniform course of decision has been to declare that it is not within the competency of a state to legislate in such a manner as to obstruct interstate commerce. *If a State*, with its recognized powers of sovereignty, is impotent to obstruct interstate commerce, *can it be that any mere voluntary association of individuals within the limits of that State has a power which the State itself does not possess.*"

The right of a man to work is identical with that of the trader to do business, and there are no cases to the contrary.

Page 293:

> "And that combination rests on many judgments of this court, to the effect that the act prohibits any combination whatever to secure action which essentially obstructs the free flow of commerce between the States, *or restricts, in that regard, the liberty of a trader to engage in business.*"

In

Thomsen v. Cayser, 243 U. S. 66,

this Court says on page 85:

> "The defendants were common carriers and it was their duty *to compete, not combine;* and their duty takes from them palliation, subjects them in a special sense to the policy of the law."

On page 87:

> "And it is established that the conduct of property embarked in the public service is subject to the policy of the law."

That was a steamship case where steamship companies had combined to fix freight rates.

In the case of *Wilson v. New,* 243 U. S. 332, in which case the Adamson Law, regulating wages, overtime, hours of labor, etc., on railroads came before the Supreme Court, the Court speaking of the powers of Congress on such subjects says on page 349:

> "Equally certain is it that the power has been exercised so as to deal not only with the carrier, but with its servants and to regulate the relation

of such servants not only with their employers but between themselves. * * *"

Page 364. Concurring opinion of Justice McKenna:

"I speak only of intention; of the power I have no doubt. When one enters into interstate commerce one enters into a service in which the public has an interest and subjects one's self to its behests. And this is no limitation of liberty; it is the consequence of liberty exercised, the obligation of his undertaking, and constrains no more than any contract constrains. The obligation of a contract is the law under which it is made and submission to regulation is the condition which attaches to one who enters into or accepts employment in a business in which the public has an interest."

Petitioner and those on whose behalf he sues have chosen the sea as a calling, other men have established ship-chandleries where ship outfits are sold, others operate tugboats to move vessels around, others have groceries and butcher shops that sell to none but vessels. Suppose these same defendants should establish a rule that each of the foregoing must register their names in their office and take their turn for a sale of goods or for the use of a tow-boat, that would be held a restraint on their right to do business; or supposing they should combine and tell all shippers they must register their names and take their turn as to vessels without any choice as to the vessel, that would be held to be a restraint.

The same rule must apply to persons, without whom vessels can not operate at all—their crews. If the

whole of the employers in a line of business can combine and make regulations to suit themselves, all can do it, and it would only be a question of time when all persons who work for others would be reduced to a condition of peonage.

Respondents in this case cannot complain about the regulations established by Congress.

In the case of *Patterson v. Bark Eudora*, 190 U. S. 169, the section prohibiting the payment of advance wages to seamen on foreign vessels, when such seamen were shipped in the United States, came before the Court and the question of the invasion of the liberty of contract was raised, just as defendants raise it in this case, and we respectfully quote the following language from that decision:

> "'From the earliest historical period the contract of the sailor has been treated as an exceptional one, and involving, to certain extent, the surrender of his personal liberty during the life of the contract. Indeed, the business of navigation could scarcely be carried on without some guaranty, beyond the ordinary civil remedies of contract, that the sailor will not desert the ship at a critical moment, or leave her at some place where seamen are impossible to be obtained—as Molloy forcibly expresses it, "to rot in her neglected brine". Such desertion might involve a long delay of the vessel while the master is seeking another crew, an abandonment of the voyage, and in some cases, the safety of the ship itself. *Hence the laws of nearly all maritime nations have made provisions for securing the personal attendance of the crew on board, and for their criminal punishment for desertion, or absence without leave during the life of the shipping articles.*

'If the necessities of the public justify the enforcement of a sailor's contract by exceptional means, justice requires that the rights of the sailor be in like manner protected. The story of the wrongs done to sailors in the larger ports, not merely of this nation but of the world, is an oft-told tale, and many have been the efforts to protect them against such wrongs. One of the most common means of doing these wrongs is the advancement of wages. Bad men lure them into haunts of vice, advance a little money to continue their dissipation, and, having thus acquired a partial control and by liquor dulled their faculties, place them on board the vessel just ready to sail and most ready to return the advances. When once on shipboard and the ship at sea the sailor is powerless and no relief is availing. It was in order to stop this evil, to protect the sailor, and not to restrict him of his liberty, that this statute was passed. And while in some cases it may operate harshly, no one can doubt that the best interests of seamen — a class are preserved by such legislation.

Neither do we think there is any trespass on the rights of the States. No question is before us as to the applicability of the statute to contracts of sailors for services wholly within the State.' "

PETITIONER HAD A RIGHT TO BRING A CLASS SUIT.

Equity Rule 38;

Betty v. Kurtz, 2 Peters 563, 583-4;

Callon v. Hope, 75 Fed. 758;

Duplex v. Deering, 254 U. S. 443;

Gieske v. Anderson, 77 Cal. 247;

Wheelock v. First Presbyterian Church, 119 Id. 477;

Florence v. Helms, 136 Id. 613.

THE EFFECT OF THE RULES AND REGULATIONS OF RESPONDENTS.

The taking of turns for employment, that is only obtaining employment by number, is destructive of competition not only as to the employee but also as to the employer, neither has any right of selection, and that would eventually lessen the standard of efficiency, as an inefficient workman would stand just as much chance of employment as a skilled one, and there would be no incentive to acquire skill.

The rules again say that no employment would be obtained by any one who failed to obey them; that is in effect a blacklist.

In the case of

Gompers v. Bucks Stove & Range Company,
221 U. S. 418,

this Court says:

> "In Loewe v. Lawlor, 208 U. S. 274, the statute was held to apply to any unlawful combination resulting in restraint of interstate commerce. In that case the damages sued for were occasioned by acts which among other things, did include the circulation of advertisements. But the principle advanced by the Court was general. It covered any illegal means by which interstate commerce is restrained, *whether by unlawful combinations of capital, or unlawful combinations of labor;* and we think also whether the restraint be occasioned *by* unlawful contracts, trusts, pooling arrangements, *blacklists,* boycotts, *coercion, threats, intimidation* and whether they be made effective, in whole or in part, by acts, words or printed matter."

The above being quoted from *In re Debs,* 158 U. S. 564.

The complaint clearly shows that defendants require a seaman to register and carry a book before he can obtain employment, and plaintiff alleges he cannot obtain work unless he does so. Such requirements are necessarily the obtaining of permission to work, the obtaining of permission from the whole body before he can work for one, and the whole body, irrespective of interference with interstate and foreign commerce, legally have no right to specify the requirements under which a seaman shall work for one of their members.

That the continuous discharge system can be used and has been used for blacklisting purposes is best evidenced by the fact that the Lake Carriers' Association had a similar system, a report on which is to be found in Pamphlet Whole Number 235, issued by the U. S. Department of Labor Bureau Statistics in 1918, under the title "Employment System of the Lake Carriers' Association". An investigation of the system was ordered by the Bureau and the conclusions of the investigator were as follows, pages 31 and 32 of said report and pamphlet:

> "This evidence of the continuing dissatisfaction of the sailors with their jobs on the Lakes, in addition to the evidence herewith submitted showing the existence of a system of practically compulsory registration and continuous-service records which actually operate as a black list, at the best, holds threats of the black list over the seamen, indicates pretty clearly that there is something radically wrong with the present system of labor employment on the Lakes. Many seamen are bitterly antagonistic to this 'welfare-plan' shipping system. This opposition is partly

> due to the fact that, apart from its merits or demerits, they feel that it is a system imposed upon them—a plan in the operation of which they have no part. They consider it undemocratic and feel that it seriously infringes upon their freedom of action and upon their right to organize among themselves for the betterment of the conditions upon which they work."

Matters became so serious on the Lakes owing to the discharge book system which was practically about the same as the book in this case as shown by the report, excepting that on the Lakes, the carriers always denied that seamen were compelled to go to their offices to get work, and in this case the appellees flatly say in effect he must go there or he cannot get work, and the complaint alleges he must go there; that finally the United States Shipping Board appointed ex-Governor Bass of New Hampshire to investigate, and upon the coming in of his investigation decided as follows, page 33 of Report:

> "Upon all the evidence received this board has decided that the discharge book is undesirable and should be abolished. It is believed, however, that certain features of the discharge book system are of value both to management of the shipping industry and to the men."

There is some evidence, or statement in the report that it was decided to continue it under government supervision. However, the law provides for the same thing in the certificate of discharge.

In the Report of the United States Shipping Board on Work, Wages and Industrial Relations during the

Period of the War, issued in 1919, we find the following on page 24:

> "After an investigation carried out in accordance with this promise the Shipping Board announced on November 21, 1917, that what had been known as the continuous discharge book should be abolished. In its place individual certificates of discharge might still be issued; but only special data could be given as would describe the seaman and the nature of his service, thereby eliminating the objectionable 'personal opinion' feature, or any other notation that might indicate a seaman's union activities. By this regulation it was hoped that the good features of the Lake Carriers' Welfare Plan might be saved, but that the possible use of its records as a 'blacklisting device' might be prevented. * * *
>
> With the opening of Lake navigation in the spring of 1918, it was found that the labor issues in that section were assuming a much more serious form. The Shipping Board was informed that the Lake Carriers' Association has substituted for the discharge book a 'certificate of membership', with a pocket in it, as a container for the individual discharge certificates, and that all the papers had as before to be produced and deposited at the time of employment. It was believed by the men that the new device could be made to serve exactly the same purpose as the old."

Page 26:

> "In an effort to ease this tense situation the Shipping Board had already taken up the discharge system, and during the months of June and July suggested and then directed that the discharge certificate should not be in book form or accompanied by a container, and that it should state on its face that it was the property of the man to whom it was issued. Nor was the holder of the certificate to be required to deposit it or

> produce it at the time of hiring. It was declared to be 'the intent of this finding that seamen should be employed solely with reference to their fitness for the work and not with reference to membership in Welfare Plan, nor with reference to affiliation with or activity in any union'."

We have already called the Court's attention to the fact, that the Shipping Commissioners' Act is copied from the British Merchant Shipping Act, the certificate of discharge is the discharge that has been used and under which the enormous British merchant fleet has been built up and operates, any innovations would seem to be clearly unnecessary, and the innovation in this case is a clear blacklisting scheme, and is unlawful as it restrains both the seamen from freely engaging in interstate and foreign commerce, and also the individual operator of a vessel who is a member of either of appellee organizations.

The language of appellees is:

> "and no person will be employed by these associations unless he is registered at their employment offices and has in his possession this Certificate and Discharge."

There is coercion, threats and intimidation in that language within the inhibition this Court has laid down in *Gompers v. Bucks Stove and Range Company*, above cited.

That the combination complained of herein is a combination in restraint of one of the instrumentalities of interstate and foreign commerce to freely engage therein cannot be questioned.

And no good reason can be shown why such instrumentality is not entitled to injunctive relief. Section 16 of the Clayton Act says "any person" may obtain such relief. To hold otherwise would be to put the rights of property above the rights of the man.

Supposing a seaman should accumulate sufficient in his calling to acquire a vessel and such vessel was restrained as the seamen are here, can it be possible that in the transition of the fruits of his labor over into a piece of observable property, rights attached to it that were not possessed while he was acquiring it? That a piece of property has a right superior to the individual? The right of both *acquiring* and *enjoying* property are generally conceded to be equal rights before the law.

EFFECT OF THE SHIPPING COMMISSIONERS' ACT.

There is nothing in the Shipping Commissioners' Act that compels any shipowner or master of a vessel to take any seaman the Shipping Commissioner may designate. It is simply a public employment office established to facilitate the operation of vessels, where a ship-master can go to look over the register of names and pick out those he may want, and find a crew where otherwise he might not be able to find one. England has built up her enormous merchant marine under the system, and again, the scheme is to protect both the seaman and commerce within the principles explained in *Patterson v. The Bark Eudora,* heretofore cited. Ships have run from the earliest periods

of history to the present without such rules and no necessity for them at this time appears.

The following are analogous sections of the law on the subject:

R. S. Sec. 4501:

> "The Secretary of Commerce shall appoint a commissioner for each port of entry, which is also a port of ocean navigation, and which, in his judgment, may require the same; such commissioner to be termed a shipping commissioner, and may from time to time, remove from office any such commissioner whom he may have reason to believe does not properly perform his duty. * * *"

British Merchant Shipping Act:

> "146. The Board of Trade may grant to such persons as it thinks fit licenses to engage or supply seamen or apprentices for merchant ships in the United Kingdom, to continue for such periods, to be upon such terms and to be revocable upon such conditions as such board thinks proper."

R. S. Sec. 4504:

> "Any person other than a commissioner under this Title who shall perform or attempt to perform, either directly or indirectly, the duties which are by this Title set forth as pertaining to a shipping commissioner, shall be liable to a penalty of not more than five hundred dollars. * * *"

British Merchant Shipping Act, Sec. 147:

> "(1) If any person not licensed as aforesaid, other than the owner or master or mate of the ship or some person who is bona fide the servant and in the constant employ of the owner, or a Shipping Master duly appointed as aforesaid, engages or supplies any seaman or apprentice to be entered on board any ship in the United Kingdom, he shall for each seaman or apprentice so

engaged or supplied, incur a penalty not exceeding twenty pounds."

The owner cannot even do as above under our law except in the trade between the United States and the British North American Possessions, or the West India Islands, or the Republic of Mexico under R. S. 4501.

What Congress intended to do is very clear, it turned the whole matter of the supplying, engaging and discharge of seamen over to the Shipping Commissioner, defined his duties in Section 4508 of the Revised Statutes, and then enacted Sub. (3) of Section 147 of the British Merchant Shipping Act as Section 4515 of the Revised Statutes, imposing a penalty of two hundred dollars for the receipt of each seaman on board contrary to the provisions of the Shipping Commissioner's Act.

Dated, San Francisco,
February 18, 1926.

H. W. HUTTON,
Attorney for Petitioner.

FILED
OCT 4 1926
WM. R. STANSBURY
CLERK

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1926.

No. 306

CORNELIUS ANDERSON, suing on behalf of himself and all other seamen employed in Interstate and Foreign Commerce by Sea on Vessels flying the flag of and engaged in the Merchant Service of the United States of America, and sailing to and from Ports on the Pacific Coast of the said United States,

Petitioner,

vs.

SHIPOWNERS ASSOCIATION OF THE PACIFIC COAST, PACIFIC AMERICAN STEAMSHIP ASSOCIATION, their members, associates, agents and servants, JOHN DOE and RICHARD ROE,

Respondents.

} In Equity

BRIEF FOR PETITIONER.

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PHELAN-WALSH PRINTING CO., SAN FRANCISCO

Subject Index

Page

INDEX OF CLAIMS.

Petitioner claims that respondents have combined together for the purpose of and have created a monopoly that embraces a whole industry 3

He also claims that the allegations of the complaint are sufficient without specifically alleging the violation of a statute 4

He also claims that respondents enforce rules created by themselves that are regulations of commerce that only the Congress can make 5

He also claims that interstate and foreign commerce commences with the initial transaction, in this case the registration of the seaman 5

He also claims that by its terms the Shipping Commissioners Act is exclusive 6

He also claims that respondents' requirement that seamen take turns for employment destroys freedom of contract and the right of a seaman to select his own place of abode; to determine for himself what employer he will work for; to determine who he will live and associate with; to select the trade in which he shall be employed; to take employment satisfactory to him; that such taking of turns also destroys the incentive for improvement in his calling 7

He also claims that the taking of turns mentioned by the learned United States Circuit Court of Appeals in the Street case are not analogous 7

He also claims that respondents' rules are destructive of the right given to the master of a vessel to select his own crew and the rights of officers of vessels to have a voice in the election of those upon whom they have to depend to carry on work 8

He also claims that the whole of respondents' rules are a surrender by the shipowner of his duty to compete with other shipowners, and carry on his business according to his own judgment and discretion 8

Page

He also claims that the making up of records of a man's character by respondents, who neither employ nor pay him is an invasion of natural rights..... 8

He also claims that respondents' rules are regulations of commerce and that Congress has made all of the statutory rules necessary 8

He also claims that respondents' rules destroy seamen's natural right of freedom of contract..... 8

He also claims that the United States District Court had jurisdiction over his case..... 9

He also claims that respondents' rules require seamen to do more than the law requires of them in order to obtain employment, hence are a complete restraint..... 9

He also claims that the regulations made by Congress for the supplying and engagement of seamen, were made for the protection of interstate and foreign commerce, and it would be dangerous to permit associations of individuals to promulgate additional rules..... 9

He also claims that respondents' arbitrary rules that no seaman can be employed on any vessel without a card issued by respondents is an unwarranted interference in the right of carrying on business as is also the fixing of wages by respondents who neither employ nor pay the seaman.. 9

He also claims that respondents' continuous discharge book violates provisions of Acts of Congress on the same subject and is a convenient method of blacklisting..... 10

He also claims that seamen are as much an instrumentality of commerce as the vessels, and that if the whole of such instrumentality is restrained the whole of commerce is restrained 10

He also claims that his individual needs show he was entitled to an injunction herein..... 10

He also claims that as society requires him to provide himself with necessities, society should protect him in endeavoring to do so and prevent unnecessary burdens in that behalf 11

He also claims that respondents' rules violate Section 8 of Article I of the Constitution of the United States..... 11

Pages

He also claims that respondents' rules interfere with his right to sell his labor to his own best advantage, and are therefore an interference with his property rights..... 11

He also claims that interstate and foreign commerce on the Pacific Coast of the United States and seamen engaged therein are subjected to respondents' rules, which rules are against public policy, therefore they must be a complete restraint 12

ASSIGNMENTS OF ERROR.

The assigments of error are to be found..... 12-18

STATEMENT OF FACTS.

The statements of facts can be found.....18-22

ARGUMENT.

Respondents have a monopoly that directly restrains every seaman that engages in interstate and foreign commerce..22, 28

The absolute rights of seamen as members of society..... 29-43

The purposes of the United States Constitution are to secure uniformity 44-46

Respondents are dividing authority with Congress..... 45-60

Petitioner as an alien can maintain this action..... 61

Petitioner's right to a free market for his labor is interfered with by respondents 61-70

Petitioner was entitled to injunctive relief..... 70-72

Petitioner's rules and regulations are such as only Congress has the power to make 72, 79

Petitioners had the right to bring a class suit..... 79

The effect of respondents' rules and regulations.....79, 84

Effect of the Shipping Commissioner's Act.....85, 87

Table of Authorities Cited

	Pages
Adair v. U. S., 208 U. S. 161, 72	24
Anderson v. Shipowners Association et al., 10 Fed. (2nd) 96	1
Atkins v. W. A. Fletcher Co., 65 N. J. Eq. 658, 666	71
Beatty v. Kurtz, 2 Peters 563, 583, 4	79
Berry v. Donovan, 188 Mass. 353, 355, 6	67
Bittner v. West Virginia Pits Coal Co., 214 Fed. 22	39
Butchers Union v. Crescent City Co., 111 U. S. 755	23
Butler v. Boston Steamship Co., 130 U. S. 527, 554	57
Callon v. Hope, 75 Fed. 758	79
Coppage v. Kansas, 236 U. S. 1, 14	24
Coronado v. United Mine Workers, 268 U. S. 295, 310	26
Curran v. Galen, 152 N. Y. 33, 37	63
Dowd v. United Mine Workers of America, 235 Fed. 1	40
Duplex v. Deering, 254 U. S. 443, 464	71, 79
Eastern States Lumber Ass'n. v. U. S., 234 U. S. 600	62
Erdman v. Mitchell, 207 Pa. St. 79	67
Farrell v. McCrea, 1 Dallas 304, 5	57
Florence v. Helms, 136 Cal. 613	79
Gable v. Vobbegut Shoe Co., 274 Fed. 66	71
Gieske v. Anderson, 77 Cal. 247	79
Gillespie v. People, 188 Ill. 176	70
Gleason v. Thaw, 185 Fed. 345-347	69
Gompers v. Buck Stove & Range Co., 221 U. S. 418	79
Hilton v. Eckersley, 6 Ellis & Blackburn 47, 73-76	32
Hundley v. Louisville & Nashville Ry. Co., 105 Ky. 164, 165.	61
Industrial Association v. United States, 268 U. S. 64	22
In re Grand Jury, 62 Fed. 840	39
Jones v. Leslie, 61 Wash. 107, 110	67
Kenney v. Blake, 125 Fed. 672	73
Lawlor v. Loewe, 235 U. S. 255	39
Loewe v. Lawlor, 208 U. S. 303, 4	45, 75
Luckenbach S. S. Co. v. Campbell, 8 Fed. (2nd) 223, 224	5

Pages

Marinelli v. United Booking Offices, 227 Fed. 165..... 26
McCabe v. Atchison, Topeka & Santa Fe Ry. Co., 235 U. S. 151, 162 10
Missouri Pacific Ry. Co. v. Stroud, 267 U. S. 404, 408..... 45
Motion Pictures Patent Co. v. Universal Film Co., 235 Fed. 398, 407 28
Mogul S. S. Co. v. McGregor, 23 Queen's Bench (1889) 598, 603 64

Patterson v. Bark Eudora, 190 U. S. 168, 182.....45, 77
People v. McFarlin, 89 N. Y. Supp. 527..... 68
Plant v. Wood, 176 Mass. 492, 498..... 64
Polk et al. v. Cleveland Ry., 151 N. E. 808..... 37

Ritchie v. People, 155 Ill. 98..... 70

Sailors Union v. Hammond Lumber Co., 156 Fed. 454..... 69
Slaughter House Cases, 16 Wallace 36, 127..... 69
Standard Oil Co. v. United States, 221 U. S. 1..... 25
State v. Chapman, 55 Atlantic 94..... 69
Street v. Shipowners Association, et al., 299 Fed. 5..... 6

The Lottawanna, 21 Wall. 558, 578..... 72
Thomas v. Cincinnati Ry. Co., 62 Fed. 803..... 39
The Passenger Cases, 7 Howard 232, 407..... 43
The Troop, 117 Fed. 557..... 73
Thomsen v. Cayser, 243 U. S. 66, 85..... 75
Tillbury v. Oregon Stevedoring Co., 7 Fed. (2nd) 1..... 3

United Leather Workers v. Herbert, 265 U. S. 457, 471.... 25
United Leather Workers Int. Union v. Herkert Meisel Trunk Co., 284 Fed. 446, 449..... 28
United Shoe Machinery Co. v. Sullivan, etc., 234 Fed. 127, 144 28
United States v. Debs, 64 Fed. 724..... 39
U. S. v. Elliott, 64 Fed. 29..... 39
U. S. v. Whitney, 212 Fed. 466..... 39
U. S. v. Workingmen's Amalgamated Council, 54 Fed. 994.. 39

Wheelock v. First Pres. Church, 119 Cal. 477..... 79
Wilson v. New, 243 U. S. 332, 349-364..... 76

Pages

CONSTITUTION, STATUTES, ACTS CITED

Preamble 16
U. S. Constitution, Sec. 8, Art. 1, Clause 3 ..... 11, 44
Amendment XIII 30
Clayton Act, Secs. 4, 16 ..... 17, 40, 41
Judiciary Act, Sec. 24, Clause 5 71
Sherman Act 17, 18
Sherman Act, Secs. 1 and 2 24
21 Jac. 1, 3 31
Naturalization Act, Sec. 8 61
Panama Canal Act 42
Revised Statutes, Sec. 4290 51
Revised Statutes, Sec. 4291 52
Revised Statutes, Sec. 4292 52
Revised Statutes, Sec. 4501 ..... 74, 85
Revised Statutes, Sec. 4504 ..... 58, 86
Revised Statutes, Sec. 4507 48
Revised Statutes, Sec. 4508 ..... 74, 86
Revised Statutes, Sec. 4553 52
Revised Statutes, Sec. 4515 ..... 59, 86
Revised Statutes, Sec. 4612 53
British Merchant Shipping Act 85, 86

TEXT BOOKS

Benedict's Admiralty, Sec. 277 47
Blackstone's Commentaries 29, 30, 51
Mc'Lachlan's Law of Merchant Shipping 47
United States Department of Labor Pamphlet Whole Number 235 80
Report of U. S. Shipping Board on Work, Wages and Industrial Conditions during the period of the War 82

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1926.

No. 306

CORNELIUS ANDERSON, suing on behalf of himself and all other seamen employed in Interstate and Foreign Commerce by Sea on Vessels flying the flag of and engaged in the Merchant Service of the United States of America, and sailing to and from Ports on the Pacific Coast of the said United States,
Petitioner,

vs.

SHIPOWNERS ASSOCIATION OF THE PACIFIC COAST, PACIFIC AMERICAN STEAMSHIP ASSOCIATION, their members, associates, agents and servants, JOHN DOE and RICHARD ROE,
Respondents.

} In Equity.

BRIEF FOR PETITIONER.

The opinion under review herein is reported as follows:

Anderson v. Shipowners Ass'n. et al., 10 Fed. Rep. (2nd) 96,

and is also found at (R. 43), and the short opinion of the United States District Court herein, not reported, is to be found at (R. 21).

The date of the judgment to be reviewed is January 18th, 1926 (R. 47).

The judgment became final on February 17th, 1926, under the following parts of Rule 32 of the United States Circuit Court of Appeals for the Ninth Circuit, to-wit:

> " * * * Such mandate, if not stayed by the order or the Court, shall be issued on the expiration of thirty days from the date of such final determination, unless within said time a petition for rehearing be filed, in which case the mandate shall be stayed until five days after the determination of such petition."

An order staying the issuance of the mandate was made by that Court and the petition for certiorari was filed in this Court on March 1st, 1926.

SPECIFIC CLAIMS ADVANCED, AND RULINGS MADE, IN THE LOWER COURT WHICH ARE RELIED UPON AS THE BASIS OF THIS COURT'S JURISDICTION.

The opinion of the United States District Court herein can be found at (R. 21) and reads:

> "In this case I am bound by the decisions of the Supreme Court of the United States, in Street v. Shipowners Association, 263 U. S. 334, and the decision of the Court of Appeals for this Circuit in Street v. Shipowners Association, 299 Fed. 5 and Tillbury v. Oregon Stevedoring Company, filed August 3, 1925, and not yet reported."

(The *Tillbury* case is now reported in 7 Fed. (2nd) 1.)

The rulings of the Court hereafter referred to are, therefore, the rulings of the United States Circuit Court of Appeals for the Ninth Circuit.

(1) Petitioner claims that on a motion to dismiss, the allegations of the complaint are admitted to be true.

(2) Petitioner further claims that respondents have combined together for the purpose of and have created a monopoly inhibited by the anti-trust laws of the United States, which monopoly affects a whole industry and the restraint thereon, therefore, must necessarily be complete, and it has complete control of all merchant vessels of the United States engaged in interstate and foreign commerce plying to and from Pacific Coast ports of the United States and the engagement and discharge of seamen employed thereon, the purpose of which monopoly is alleged to be, to restrain the freedom of all seamen on the said Pacific Coast in engaging in interstate and foreign commerce (R. 11), that the allegations of the complaint show that such monopoly is co-extensive with all of such commerce and the vessels engaged therein, hence extends wherever such vessels go, which is interstate on the Pacific Coast, to the Eastern Coast of the United States and all over the world, and that such restraint is direct and a seaman cannot get work without yielding to the rules respondents have promulgated (R. 6).

The only ruling of the learned Circuit Court of Appeals thereon is the following (R. 45), in which it erroneously holds that such purpose was not alleged, but impliedly admitted that an impediment existed, erroneously holding however that it was but indirect and incidental, it saying (R. 45):

> "It is not alleged that the purpose of the practice complained of is the restraint of interstate and foreign commerce. It is contended that less capable men are employed on vessels than would be employed if the officers of the vessels looked after the employment of seamen. This result is alleged to follow from defendant's practice of employing seamen in the order in which they apply for work. This is at most an indirect and incidental impediment to the transaction of interstate commerce. The conduct complained of falls without the inhibitions of the Sherman Act, the Clayton Act, and the federal anti-trust acts generally. Street v. Shipowners Association, 299 F. 5; Tillbury v. Oregon Stevedoring Co., Inc., 7 F. (2nd) 1. * * *"

The *Tillbury* case was a stevedore's case confined to Portland, Ore., and in which there was no legislation of Congress regulating employment as in the case of seamen, and the *Street* case does not seem to touch upon restraint on interstate and foreign commerce at all.

(3) Petitioners also claim that the allegation of the purpose of a combination would be but the conclusion of the pleader that would not add anything to the force of the pleading, and that it is the duty of a Court to apply any law that covers the facts alleged in a complaint whether the law or a purpose to violate the law is mentioned or not.

The learned Circuit Court of Appeals, however, found in effect that it was necessary to allege that the purpose of respondents' monopoly and combination was the restraint of interstate or foreign commerce (R. 45).

The last previous expression of the said Court upon the same subject was on October 19th, 1925. In the case of *Luckenbach S. S. Co. v. Campbell,* 8 Fed. (2nd) 223, 224, in which it said:

> "There seems to be some contention that no reference was made in the libel to any statute, but this is wholly unnecessary. The pleader must plead his facts, and, when he does so, he may invoke the protection of the common law, or of any applicable statute."

(4) Petitioners also claim and it is alleged (R. 3, 4, 16) that in the exercise of the monopoly arising from respondents' combination, respondents enforce rules created by themselves that are regulations of commerce, that directly restrain the right of all seamen to freely engage in interstate and foreign commerce.

The Circuit Court of Appeals conceded respondents' practices, but erroneously held that they fell without the inhibitions of the Sherman Act, the Clayton Act, and the federal anti-trust laws generally (R. 45).

(5) Petitioner also claims that interstate and foreign commerce commences with the initial transaction, in this case the registration of seamen's names in respondents' office (R. 4, 5), and that when Congress has legislated that such registration shall be done at the office of the shipping commissioner, registration

there is exclusive and additional registration in respondents' office is a direct restraint, on the right to engage in the commerce involved herein (R. 5, 11).

The learned Circuit Court of Appeals held (R. 46) that such registration in respondents' office was but preliminary to the execution of the form of the contract required by the statute, and failed to rule on anything else, although its language impliedly concedes that being preliminary to the execution of the contract, it is necessarily a part of such contract.

(6) Petitioner claims that by its terms the shipping commissioner's act is exclusive in all matters that it embraces, and would be exclusive without a direct provision to that effect.

The learned Circuit Court of Appeals, however, adopted the rulings in *Street v. Shipowners Ass'n. of the Pacific Coast,* 299 Fed. 5, in which it is held on page 9 that the Shipping Commissioner's Act is not exclusive, saying:

> "We agree with the court below that the service of the shipping commissioner under the Shipping Commissioner's Act 'is not exclusive'. Such bureaus may be maintained by either seamen or employers independently, and may render material assistance without impinging on either the letter or the spirit of the statute."

(7) Petitioner also claims that the requirement of respondents that seamen take turns for employment according to registered number (R. 5) destroys freedom of contract and the natural right of all seamen sailing on American merchant vessels, sailing to and from the Pacific Coast (R. 11, 12), as follows:

(a) To select his own place of abode, as seamen live where they work.

(b) To determine for himself what employer he will work for.

(c) To determine what officers he will work under.

(d) To determine who he will live and associate with.

(e) To select the trade in which he shall be employed.

(f) To select the ship on which he shall be employed.

(g) To take employment satisfactory to him.

(h) That it also destroys the incentive for improvement in the calling (R. 12).

The learned Circuit Court of Appeals passed upon that claim in the *Street* case (supra) and held that taking of turns obtained in the following instances:

The registration of voters;

Taking of turns at post offices;

Theaters;

Bread lines.

We claim those matters are not analogous. Bread lines are so infrequent that the comparison is without merit, and as to the other matters, each is optional, and it is always within the power of a person to find a theater, place for registration or post office where he does not have to stand in line, and there is no analogy, if otherwise, with the compulsory taking of turns to obtain the necessities of life.

(8) Petitioner also claims that respondents' rules and such taking of turns is destructive of the right given by the law to the master of a vessel to select the crew of his vessel.

And is also destructive of the right of officers of vessels to have a voice in the selection of those upon whom they have to depend to carry on the work of the vessel (R. 15).

(9) Petitioner also claims that the whole of respondents' scheme and rules are a surrender by the shipowner of his duty to do as follows:

(a) Compete with other shipowners in the selection of his own employees.

(b) Carry on his business according to his own judgment and discretion.

Those matters were not passed upon by the Circuit Court of Appeals.

(10) Petitioner also claims that the making up of records of a man's character by respondents, who neither employ or pay him, is an invasion of natural rights (R. 9).

That matter was not passed on by the lower Court.

(11) Petitioner also claims that all of respondents' rules are regulations of commerce, and Congress has made all the statutory rules relating to seamen that are necessary (R. 11). That point was not passed upon by the lower Court.

(12) Petitioner also claims that respondents' rules destroy seamen's natural rights to freedom of con-

tract on the matters we have hereinbefore specifically stated.

That was not passed upon by the lower Court.

(13) Petitioner also claims that the District Court of the United States had jurisdiction of his case, irrespective of the amount involved. The lower Court, however, held that it had not (R. 44, 46).

(14) Petitioner claims that respondents' combination is a monopoly, and the complaint shows that it is (R. 11) and that all monopolies are prohibited by the anti-trust laws.

(15) Petitioner also claims that the rules of the respondents requires seamen to do more than the law requires of them to obtain employment, and in that respect are a complete restraint and violate the natural rights of the seamen.

That was not passed upon by the lower Court.

(16) Petitioner also claims that the regulations provided by Congress for the supplying and engagement of seamen, were made for the protection of interstate and foreign commerce, and that it would be dangerous to permit associations of individuals to promulgate additional rules.

(17) Petitioner also claims respondents' arbitrary rule that no seaman can be employed on any vessel without he has a card issued by respondents, as shown (R. 10), is an unwarranted interference in the right of carrying on business, as is also the fixing of wages by respondents, who neither employ nor pay the seamen.

The lower Court did not pass upon either of those matters.

(18) Petitioner also claims that the continuous discharge book (R. 6, 7, 11) violates the provisions of the Acts of Congress that has legislated upon the same matter, and is a convenient system for blacklisting, as the master of the vessel can write anything he pleases in said book, and the seaman has no redress; while on the other hand Congress has made the shipping commissioner an arbitrator of differences between seamen and shipmasters (R. 12).

The lower Court did not pass upon that matter.

(19) Petitioner also claims that seamen are as much an instrumentality of commerce as the vessels, and that if the whole of the seamen as such an instrumentality are restrained, necessarily the whole of commerce is restrained.

That was not passed upon by the lower Court excepting as hereinbefore shown.

(20) Petitioner also claims that the fact that he obtained employment and lost the same by reason of respondents' monopoly and the rules they enforce thereunder, his individual needs show he was entitled to an injunction herein, and that the following language in the *Street* case (299 Fed. 5, 9), quoted from *McCabe v. Atchison, Topeka & Santa Fe Ry. Co.*, 235 U. S. 151, is not applicable.

> "The desire to obtain a sweeping injunction cannot be accepted as a substitute for compliance with the general rule that the complainant must present facts sufficient to show that his individual need requires the remedy for which he asks."

(21) Petitioner also claims that society requiring every person to provide himself with the necessities of life, it is the duty of society to protect such person in doing so, and that whenever any association of persons require the whole of the persons engaged in any calling to do more than the law requires them to do in obtaining such necessities as hereinbefore shown, that that is a direct and immediate restraint, and if interstate and foreign commerce is concerned, it is a direct and complete restraint upon such commerce, especially when enforced through a monopoly such as respondents have.

That was not passed upon by the lower Court excepting as hereinbefore shown.

(22) Petitioner also claims that the rules of respondents violate Section 8 of Article I of the Constitution of the United States (R. 24). The ruling of the learned Circuit Court of Appeals thereon depends upon the proper construction of the *Street* case, 263 U. S. 334. We claim that the most that case decided was that the constitutional questions were not sufficient to give this Court jurisdiction on a direct appeal.

(23) Petitioner also claims (R. 25, 26) that respondents' rules interfered with the right of petitioner to sell his labor to his own best advantage, and are therefore an interference with his property right to so dispose of his labor.

(24) Petitioner also claims, that interstate and foreign commerce on the Pacific Coast of the United States and seamen engaged therein are subjected to

respondents' rules, which rules are against public policy, therefore there must be a complete restraint, and such restraint must be within the anti-trust laws.

The lower Court did not pass upon that point.

Petitioner relies on each of his assignments of error to the decree in the United States District Court (22-29), which read as follows:

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Plaintiff designates and files the following assignment of errors upon which he will rely in the prosecution of his appeal in the above-entitled cause from the final decree given and made by the above-entitled court on the 27th day of August, 1925, in the above cause.

That the District Court of the United States, for the Southern Division, Northern District of California, Third Division, in giving its opinion and rendering its final decree of August 27th, 1925, erred as follows:

1. In finding and deciding that it, said Court, was bound by the decision of the Supreme Court, of the United States in the case of *Street v. Shipowners Association, et al.*, 263 U. S. 334, for the reason that all that was decided in said decision was, that an appeal therein could not be taken direct to the Supreme Court of the United States in that case.

2. In finding and deciding that it, said Court, was bound by the decision of the United States Circuit Court of Appeals for the Ninth Circuit, in the case

of *Street v. Shipowners Association, et al.,* 299 Fed. 5, for the reason, that in the within case it appears, that plaintiff herein made demand on the defendants for registration and employment and was refused, and also obtained employment and suffered loss, by the loss of such employment, because he had not complied with defendants' rules, both of which state of fact were absent in the said case in which Alfred Street was plaintiff.

3. In finding and deciding that it, said Court, was bound by the decision of the United States Circuit Court of Appeals for the Ninth Circuit, in the case of *Tillbury v. Shipowners Association, et al.,* decided by that Court on the 3d day of August, 1925, for the reason, that none of the navigation laws of the United States relating to seamen were involved in that case, nor was the manning or navigation of vessels, but it related to the employment of stevedores alone.

4. In not finding and deciding that defendants' rules and regulations complained of in the complaint herein unlawfully interfered with the right of plaintiff, and all other seamen mentioned, to freedom of contract in obtaining employment.

5. In not finding and deciding that the policy of the United States as expressed by the acts of Congress as to the employment and discharge of seamen was exclusive.

6. In not finding and deciding that the rules of the defendants complained of herein, interfered with the right of each of its members, and their masters and/or mates of vessels to select their own employees.

7. In not finding and deciding that the complained of rules and regulations of defendants in the discharge of seamen, were regulations of interstate and foreign commerce, and therefore violated the provisions of Section 8 of Article I of the Constitution of the *United in* that such rules and regulations were within the exclusive power of Congress to make.

8. In not finding and deciding that defendants are in the business of supplying seamen in interstate and foreign commerce, and are thereby violating the provisions of Sections 4514 and 4515 of the Revised Statutes of the United States.

9. In not finding and deciding that the rules complained of in the complaint herein violated the provisions of Section 4508 of the Revised Statutes of the United States, and that the provisions of said section are exclusive as to the things therein required to be done by a United States Shipping Commissioner.

10. In not finding and deciding that the certificate of discharge containing the "character, conduct and qualifications" of seamen provided for in Section 4553 of the Revised Statutes of the United States, and the provisions of said section are exclusive, and that the continuous discharge book provided for by defendants' rules and regulations, and the report of the master on each seaman to defendants violate the provisions of said Section 4515 of the said Revised Statutes.

11. In not finding and deciding that the duties of a United States Shipping Commissioner as provided by the Revised Statutes of the United States in rela-

tion to the shipment, supplying and discharge of seamen are exclusive.

12. In not finding and deciding that the provisions of Sections 4507 and 4508 of the Revised Statutes of the United States, each provide the exclusive manner in which the acts mentioned in each of said sections shall be performed.

13. In not finding and deciding that the rules prescribed by defendant, and each thereof, the complying with which by plaintiff were necessary to enable him to sell his labor and engage in interstate and foreign commerce, interfered with plaintiff's right to dispose of his labor to his own best advantage, and thereby interfered with his property right to so dispose of his labor.

14. In not finding and deciding that each and the whole of defendants' rules complained of in the complaint herein, restrained plaintiff and all other seamen from fr ely engaging in interstate and foreign commerce.

15. In not finding and deciding that when the whole of one of the instrumentalities through which interstate and foreign commerce by sea is carried on was restrained, that the whole of such commerce is restrained.

16. In not finding and deciding that plaintiff could not be required to do more than the law required him to do in order to sell his labor and engage in interstate and foreign commerce by sea.

17. In not finding and deciding that the rules of defendants complained of in the complaint herein, and

their enforcement, deprived plaintiff of his property right to sell his labor without lawful authority, and *were the* taking of property without due process of law.

18. In not finding and deciding that the complained of rules of defendants mentioned in the complaint herein violated the spirit of the Constitution of the United States, as expressed in the following language contained in the preamble thereto, to wit:

> "In order to * * * promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

19. In not finding and deciding that the complained of rules of defendants violated Amendment IX of the Constitution of the United States, which reads:

> "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

20. In granting the motion of each of the defendants to dismiss plaintiff's complaint herein.

21. In rendering a decree dismissing plaintiff's complaint herein.

22. In granting each of the grounds of the motion of the defendants to dismiss plaintiff's complaint.

23. In deciding that plaintiff's complaint did not set forth facts sufficient to constitute a cause of action as to either of the defendants or both of them.

24. In deciding that plaintiff's complaint was without equity.

25. In deciding that plaintiff's complaint did not set forth facts sufficient to entitle plaintiff to any relief.

26. In deciding that it was without jurisdiction of plaintiff's action.

29. In not finding and deciding that defendants' rules complained of violated the provisions of the Constitution of the United States.

30. In not finding and deciding that when defendant deprived plaintiff of his employment on the "Caddopeak" they interfered with his right to engage in interstate commerce.

31. In not finding and deciding that each of the acts of the defendants as complained of in plaintiff's complaint were violative of the provisions of the anti-trust laws of the United States, to wit, the act commonly known as the Sherman Act, and the act commonly called the Clayton Act.

32. In not finding and deciding that each of the acts of the defendants complained of in plaintiff's complaint violated each of the acts mentioned in the last paragraph hereof, in that they restrained interstate and foreign commerce by sea.

33. In not finding and deciding that Congress has supplied all the rules and regulations that can be supplied in the supplying, engaging and discharging of seamen in interstate and foreign commerce.

34. In not finding and deciding that a seaman engaged in interstate and foreign commerce on American Merchant vessels has a right common to all other

employees of selecting his own employer, his own trade, and his own place of employment, excepting only under such rules and regulations, as Congress may prescribe.

35. In not finding and deciding that the taking of turns for employment was bound to reduce the standard of efficiency of those compelled to comply therewith.

36. In not finding and deciding that plaintiff and all other seamen engaged in interstate and foreign commerce, had a right to engage therein without taking his turn for employment and without being subservient to the prior demands of anyone, excepting only as a prospective employer might desire to employ him.

37. In not finding and deciding that *that* defendants associations were combinations in restraint of trade, and abridged the rights of plaintiff and all other seamen employed in interstate and foreign commerce by sea as American seamen, and therefore are unlawful.

STATEMENT OF FACTS.

The complaint shows that petitioner is an alien American seaman, and is associated together with about ten thousand other seamen who ship on American merchant vessels, all of whom are affected by the acts of the respondents that it is sought to restrain herein, and he sues on behalf of himself and all of such seamen.

That the respondents either own, operate or control every vessel flying the flag of and engaged in the merchant service of the United States plying to and from ports on the Pacific Coast of the United States and engaged in interstate and foreign commerce (R. 3, 4).

That respondents have associated together to restrain the freedom of all seamen engaged in that trade, have offices in which they compel such seamen to register their names, take turns for employment, which prevents seamen well known from obtaining employment at once, and they also compel all seamen to carry a discharge book on which is printed, among other things:

> "and no person will be employed by these associations unless he is registered at their employment offices and has in his possession this certificate and discharge" * * * (R. 4, 5, 6, 7).

That respondents further issue instructions to masters of vessels that when a seaman joins such vessel he will have the said continuous discharge book, and a card assigning him to the vessel, to take up the book and return it to the seaman when he severs his connection with the vessel with his rating, conduct, etc., and return the book to the seaman (R. 7).

Respondents also have printed in the book instructions to the seaman that when he leaves his vessel he must go to their office and get a new registered number (R. 7).

That respondents assign all seamen to vessels and give them an assignment card and the seaman so

assigned carries a card to the master of the vessel who must fill it out and return it to respondents' office when the seaman's service ends (R. 8, 9).

Respondents further instruct masters of vessels that no seaman must be employed without an assignment card issued by them designating the position to which respondents have assigned him (R. 10).

That seamen are required to have certain matters of personal description written on his discharge book, such as his place of birth, etc., and also his photograph, the latter not being insisted on, however (R. 10, 11).

That all of such matters are regulations of commerce in violation of the commerce clause of the Constitution, and have been fully provided for by Congress, in so far as Congress thought it necessary to provide for them (R. 11).

That no seaman can get employment on any of said vessels which are in excess of 300 and comprise nearly all of the vessels engaged in such trade and commerce without obeying respondents rules (R. 11).

That such rules destroy the seaman's freedom of contract, his right to select his ship, trade and employer, and make him subservient to the will of the employees of respondents who neither employ nor pay him (R. 11, 12).

That the taking of turns for employment is humiliating, destructive of competition and stifles the desire for improvement (R. 12).

That a large number of seamen have left the calling on account of such rules (R. 12).

That a seaman can readily be blacklisted as he has nothing to say about it, and no appeal from what is written on his discharge book as to his character, and it also follows that the same thing applies as to the card "Grey in Color" as he never sees that after it is delivered to the master of the vessel (R. 12).

That the whole scheme makes a seaman entirely subservient to the will of respondents who neither employ or pay him (R. 12).

That on June 15th, 1925, petitioner applied for work at respondents office in San Francisco, and was refused registration or a number for employment without a discharge book (R. 12, 13).

That he thereupon looked for and obtained work as a seaman on a vessel called the "Caddopeak" on a voyage that embraced the State of Washington, and was given a request by the mate of that vessel to respondents that petitioner be sent to that vessel, that upon presenting that request to respondents, respondents refused to send petitioner to the vessel saying they had too many men around their office now and that petitioner could not be employed on the "Caddopeak" at all (R. 13).

That petitioner met the said mate the same day and was told by him to report on board of the vessel at 1 P. M., for work which petitioner did, but the mate was told by the representative of the vessel that petitioner could not be employed on the vessel excepting through respondents' office, and petitioner lost the employment (R. 13, 14).

That petitioner would have earned $135.00 in said employment.

That respondents fix the wages paid and working conditions arbitrarily (R. 15).

That prior to the adoption of respondents rules, mates always engaged sailors as he worked them on the vessel (R. 14, 15).

That different kinds of men are required in different trades, some make short, some long voyages, but a seaman must take the vessel his turn calls for or lose his turn, and officers of vessels are deprived of the right to select the men most suitable for the trade they are engaged in, and respondents rules restrain the right of all seamen to freely engage in interstate and foreign commerce (R. 16).

ARGUMENT.

I.

RESPONDENTS HAVE A MONOPOLY THAT DIRECTLY RESTRAINS THE FREEDOM OF EVERY SEAMAN FROM ENGAGING IN INTERSTATE AND FOREIGN COMMERCE WITHIN THE TERRITORY WHERE THE MONOPOLY OPERATES.

We have no doubt respondents will rely on the case of *Industrial Association v. United States*, 268 U. S. 64. As we read that case, all that this Court decided therein, was that whatever restraint there was, was too insignificant for the Court to consider, and applied the legal maxim of *de minimus non curat lex*, saying on page 84:

> "To extend a statute intended to reach and suppress real interference with the free flow of commerce among the states, to a situation so equivocal and so lacking in substance, would be to cast doubt upon the serious purpose with which it was framed."

We understand the law to be, that any person so desiring, has a right to engage in interstate and foreign commerce, either in person or by using his property therein, whether in the case of physical property or labor, it is still property, and any interference with such rights is a restraint, here the interference is general and complete over the whole of the industry and one instrumentality of commerce.

In the concurring opinion of Mr. Justice Field, in *Butchers Union v. Crescent City Co.*, 111 U. S. he says on page 755:

> "A monopoly is defined 'to be an institution or allowance from the sovereign power of the State, by grant, commission or otherwise, to any person or corporation for the sole buying, selling, working or using of anything whereby any person or persons, bodies politic or corporate, are sought to be restrained of any freedom or liberty they had before or hindered in their lawful trade'. All grants of this kind are void at common law, because they destroy the freedom of trade, discourage labor and industry, restrain person from getting an honest livelihood, and put it in the power of the grantee to enhance the price of the commodity.
>
> "They are void because they interfere with the liberty of the individual to pursue a lawful trade or employment."

We respectfully submit that the monopoly in this case is within a great deal of the above language, the restraint of the freedom and liberty that seamen had before is present and they are hindered in the pursuit of their lawful trade, and employment, if the sovereign power cannot create such a monopoly, certainly an association of individuals cannot.

Speaking of personal liberty and the right to make contracts to acquire property this Court said in

Coppage v. Kansas, 236 U. S. 1, 14:

> "Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long established constitutional sense. The right is as essential to the laborer as to the capitalist, to the poor as to the rich, for the vast majority of persons have no other honest way to begin to acquire property, save by working for money. * * *"

In

Adair v. United States, 208 U. S. 161, 172,

this Court said, speaking of personal liberty:

> "Such liberty and right embraces the right to make contracts for the purchase of the labor of others and equally the right to make contracts for the sale of one's own labor."

An impairment of such rights must be a restraint.

The Sherman Act contains several sections, Sec. 1 deals with restraints of trade, Sec. 2, Act of July 2nd, 1890, ch. 647, 26 Stat., p. 209, deals with monopolies and reads:

"Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

A monopoly implies complete control, which respondents assume herein, and this Court has said as follows, on the illegality of such absolute control:

Standard Oil Co. v. United States, 221 U. S. 1.

In that case a number of corporations engaged in the oil industry had combined, a certain portion of territory was assigned to each, all others were excluded, just as all of respondents members are excluded herein, and this Court said, page 77:

"and the trade in each district in oil was turned over to a designated corporation within the combination and all others were excluded, all lead the mind up to a conviction of a purpose and intent we think as practically to cause the subject not to be within the domain of reasonable contention."

United Leather Workers v. Herbert, 265 U. S. 457, 471:

"It is only when the intent or necessary effect upon such commerce in the article is to enable those preventing the manufacture to monopolize the supply, control its price or discriminate as between its would be purchasers, that the unlaw-

ful interference with its manufacture can be said directly to burden interstate commerce,"

Coronado Co. v. U. M. Workers, 268 U. S. 295, 310.

"But when the intent of those unlawfully preventing the manufacture or production is shown to be to restrain or control the supply entering and moving in interstate commerce, or the price of it in interstate markets their action is a direct violation of the Anti-Trust Act."

The supply is controlled in this case.

Respondents herein do not conceal their intent, on the contrary they expressly state (Tr. p. 6):

"and no person will be employed by these associations unless he is registered at their employment offices and has in his possession this Certificate and Discharge."

They also tell masters of vessels that they cannot employ a seaman except through them.

The complaint alleges, paragraph VIII, page 5:

"That as a condition of being employed in such trade and commerce on vessels flying the American flag, the said defendants compel all seamen seeking such employment to register and take a number and take his turn for such employment according to such number, and no seaman can secure employment as aforesaid on the said Pacific Coast unless he takes such number and his turn for employment according to such number."

A more complete monopoly cannot be imagined.

An analogous state of facts arose in the case of

Marienelli v. United Booking Offices of America, 227 Fed. 165,

and the learned District Court says on pages 170, 171:

"There remains the final question as to whether the combination is in restraint of trade. The allegations show that the purpose of the defendant was to exclude from the two circuits any performer who would not deal exclusively with them, any theatre which employed any other booking agent or performer, and any performer's agent who dealt with outsiders. Not every contract which destroys a competition, theretofore existing, is within the act; *but those are which put a market into one hand.* Standard Oil Co. v. United States, 221 U. S. 1, 31 Sup. Ct. 502, 55 L. Ed. 619, 34 L. R. A. (N. S.) 843, Ann. Cas. 1912 D. 734. It is the effort to secure control over prices by a control over supply which counts. No doubt 'market' is a vague word; a combination may control within such narrow limits that new supplies are available at trivial advances; perhaps such combinations do not 'prejudice the public interests.' Nash v. United States, 229 U. S. 373, 376, 33 Sup. Ct. 780, 57 L. Ed. 1232. If the combination does not control enough of the supply to fix prices at all, it cannot be an unreasonable restraint of trade prejudicial to the public. In the case at bar the allegations show that the defendants are trying to keep all 'first class' performers for their own theatres, refusing to allow them to act, if they act elsewhere, refusing to allow theatres to have the circuits performers if they take others, refusing to deal with any performers' agents who book them elsewhere. Article XIX of the complaint alleges that 'first class' performers cannot obtain sufficient employment in the United States and Canada outside the two circuits to make a living. The necessary inference is that the defendants, if successful, will control all 'first class' performers and succeed in monopolizing the supply. This, in turn, enables them to control the whole business, and constitutes the very conditions which the Sherman Act means to prevent. If in the execution of that project they injure the plaintiff, the resulting damages are within the seventh section of that act."

That case is cited approvingly in,

Motion Picture Patents Co. v. Universal Film Company, 235 Fed. 398, 407;

United Shoe Machinery Co. v. Sullivan & Associated Billposters & Distributers Union of United States, 234 Fed. 127, 144;

United Leather Workers International Union, et al. v. Herkert Meisel Trunk Co. et al., 284 Fed. 446, 449.

The latter case holding as follows:

> "It is the established rule that interstate commerce includes 'every initiation, negotiation and intervening act of the parties to that trade or deal from the time the intercourse relative to it commences until the transportation and delivery have been completed'." (Many cases cited.)

The language of that decision is peculiarly applicable to this case. A monopoly existed, it affected wage earners and was held illegal, and no Act of Congress legislating upon the business was present as in this case. We have a monopoly here, but the law has prescribed what a seaman shall do in order to engage in interstate commerce. To require him to do more than that must be a restraint on his freedom to so engage and the whole of the seamen are affected. We will now respectfully call the Court's attention to the common law on the subject.

II.

THE ABSOLUTE RIGHTS OF MEMBERS OF SOCIETY.

In the development of society an implied agreement has arisen between it and its members. The latter surrender certain of their natural rights by living in society and on the othe hand society guarantees to its members certain others, what are called absolute rights, of which no better explanation can be found than that in *Blackstone's Commentaries* (Sharswood), Vol. I, page 139:

> "The third absolute right, inherent in every Englishman, is that of property, which consists in the free use, enjoyment, and disposal of all his acquisitions, without any control or diminution, save only by the laws of the land * * *."

As we will hereafter show, a man's right to sell his labor is property, and every man has a property right in his labor, hence he is entitled to what appears in the above quotation as the "free use" thereof.

Society recognizes the absolute right and expects that each of its members will exercise his powers under it and at least provide himself with necessities of life. In fact demands that he should do so, and on the other hand agrees to protect its members while acting within the law in selling his labor just as much as in selling any other class of property. We find that also well explained on page 124 of the above book of Blackstone, where it is said:

> "For the principal aim of society is to protect individuals in the enjoyment of those absolute rights, which were vested in them by the immutable laws of nature, but which could not be preserved in peace without that mutual assistance

> and intercourse which is gained by the institution of friendly hand social communities. Hence it follows that the first and primary end of human laws is to maintain and regulate these *absolute* rights of individuals * * *."

There is another absolute right defined by Blackstone, as "The right of personal liberty." Of that he says (Sharswood's Blackstone's Commentaries, Vol. I, page 134):

> "This personal liberty consists in the power of locomotion, of changing situation, or moving one's person to whatsoever place one's own inclination may direct, without imprisonment or restraint, unless by due course of law * * *."

That principle is reflected in the XIII Amendment to the Constitution, which reads:

> "Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.
>
> Section 2. Congress shall have power to enforce this article by appropriate legislation."

It is the natural right of all mankind to select his own situs, and move his person to whatever place he pleases, and restraint upon that in providing himself with necessities and thus performing a duty that he owes to society and that society requires him to perform, is involuntary servitude. Seamen are forced to work, commerce requires their services, and respondents' rules compel each seaman to go where they dictate or leave their calling, or become burdens upon society. There is sufficient in respondents' rules to

create involuntary servitude. A seaman may not wish to work on the particular vessel he is sent to; he may not like the voyage or the officers; still he must accept the employment with the alternative of the foregoing penalties. Physical force is not essential to create involuntary servitude. An economic force such as here exists, however, is just as potent as physical force.

And to enforce the above matters, respondents use their monopoly.

Our law being inherited from England, we naturally find the same methods of protection in both laws. For instance: respondents have a monopoly of about all the steamers in the trade in question; monopolies were condemned at common law and about the same system of suppressing them and protecting members of society against them are found in the laws of England as in this country. We can almost say that we borrowed the English statutes in those particulars, as follows:

The first English statute on Monopolies is that of 21 Jac. 1, 3, enacted in 1623, entitled:

> "An act concerning monopolies and dispensations with penal laws and the forfeitures thereof."

And reads in part:

> "That all monopolies, and all commissions, grants, licenses, charters * * * for the sole buying, selling, making, working or using of anything within this realm * * * are altogether contrary to the laws of this realm and so are and shall be utterly void and of no effect, and in no wise to be put in use or execution. * * *"

That statute then provides that actions for violations shall be tried "according to the common laws of the realm" and

> "wherein all and every such person and persons which shall be hindered, grieved, disturbed or disquieted, * * * shall recover three times so much as the damages which he or they sustained by means or occasion of being so hindered, grieved, disturbed or disquieted, * * * and double costs."

It would almost seem as if our own anti-monopoly acts were copied from that law, and if a combination, or monopoly was void under the above law, it follows it must be void under our laws. And we have such an unlawful combination described in the case of *Hilton v. Eckersley,* 6 Ellis & Blackburn 47. Where employers had entered into a combination to allow a central body to control the matter of their workmen and it was held that the employers had put themselves into a situation of restraint, and the combination was therefore unlawful. The case was first heard in the Queen's Bench, which held that the combination was unlawful. It then went to the Exchequer Chamber, and Lord Alderson delivered the judgment of the Court, which is found on pages 73-76 of the above report, as follows:

> "This was an action by which the plaintiff sought to enforce a bond against the defendant. The condition of the bond recited that the defendant and seventeen other obligors, being respectively owners and occupiers of mills and other premises in Wigan and the neighborhood, carried on their business of spinners and weavers of cotton yarn and cloth, and employed many work-

people and servants: and that certain societies or combinations subsisted in the neighborhood amongst divers persons, whereby persons willing to be employed were deterred by a reasonable fear of social persecution and other injuries from hiring themselves to work at the said establishments; and that thereby the legal control of the obligors over their property and establishments was injuriously interfered with; and that these combinations were sustained by funds arbitrarily levied and extracted from the workmen employed by the obligors and receiving wages from them; and that it was necessary to take measures for vindicating their legal rights to the control and management of their own property, which would best sustain the rights of the labourer to the freer disposal of his skill and industry: and that to effect this, the obligors had agreed to carry on their works in regard to the amount of wages to the labourer to be employed therein, *and the times and periods of the engagements of workpeople*, and the hours of work, and the suspending of work, *and the general discipline of their* works and establishments (in conformity to law) for the period of twelve months from the date of the bond, *in conformity with the resolutions of a majority of the said obligors present at any meeting to be convened as therein mentioned;* and that, for that purpose they had entered into the bond; and the condition of the bond was therein stated to be that, if the several obligors and their partners should so carry on their works for twelve months in conformity with the resolutions of such majority, the bond as to 500l., in which each was to be bound, should be void: otherwise to be in full effect. The plea concluded with an averment that, save as aforesaid, there was no consideration for execution of the bond by defendant; *and that the bond was in restraint of trade,* and illegal and void. To this plea there was a demurrer. And, on its being argued before the Judges of the Court of Queen's Bench, the majority of that

Court gave judgment in favor of the plea. We are of the opinion that the judgment was right, and ought to be affirmed.

The question is, whether this is a bond in restraint of trade: and we think it is so. Prima facie, it is the privilege of a trader in a free country, in all matters not contrary to law, to regulate his own mode of carrying it on according to his own discretion and choice. If the law has in any manner regulated or restrained his mode of doing this, the law must be obeyed. *But no power short of the general law ought to restrain his free discretion. Now here the obligors to this bond have clearly put themselves into a situation of restraint.*

First: Each of them is prevented from paying any amount of wages except such as the majority may fix, whatever may be the circumstances of the work to be done and his own opinion thereon. Secondly, they can only employ persons for such times and periods as the majority may fix on, however much the minority may deem it for their own interests to do otherwise. The hours of work, the suspending of work, partially or altogether, the discipline and management of their establishments, is to be regulated by others forming a majority and taken from every individual member. And all this for a fixed period of twelve months. All these are surely regulations restraining each man's power of carrying on his trade according to his discretion, for his own best advantage, *and therefore are restraints on trade not capable of being legally enforced.*

We do not mean to say that they are illegal, in the sense of being criminal and punishable. The case does not require us; and we think we ought not to express any opinion on that point.

But then it is said that these regulations, otherwise illegal, are prevented from being so considered by the circumstances against which they

were intended to operate. It appears that a counter combination existed on the part of certain workmen, and that the alleged object of this bond was to counteract this, and to set the willing and industrious workmen free from its powers. But, supposing this to be the object, and that we may even consider it as laudable, we cannot agree that it is laudable or right to use such means of counteraction. The maxim *injuria non excusat injuriam* is a sound one, both in common sense and at common law. This is only to put one wrong as counterbalancing another wrong, to place the industrious workman in the fearful situation *of being oppressed by a majority of masters in order to prevent him from being oppressed by a majority of his fellow workmen.*

And, besides, here it is to be observed that the masters' combination is not limited to the duration of the suggested combination of the workmen. It is to last for twelve months absolutely; so that, of the combinations assigned as the excuse for it broke up, as they almost always do, in a short period, this restraint upon the obligors would still continue in force after the object against which it seems to have been directed had long ceased to exist.

This bond, therefore, if not altogether illegal and punishable, is framed to enforce at all events a contract by which the obligors agree to carry on their trade, *not freely as they ought to do, but in conformity to the will of others;* and this, not being for a good consideration, *is contrary to the public policy.*

We see no way of avoiding the conclusion that, if a bond of this sort between masters is capable of being enforced at law, an agreement to the same effect amongst workmen must be equally legal and enforceable; and so we shall be giving a legal effect to combinations of workmen for the purpose of raising wages, and make their strikes

capable of being enforced at law. We think the legislature has been contented to make such strikes not punishable; and certainly they never contemplated them as being the subject of enforcement by a suit at law, on the part of the body of delegates against any workmen who might have been seduced by some designing person to sign an engagement with penalty to continue in these strikes as long as a majority were for holding out.

We think for these reasons that the judgment of the court of Queen's Bench is right and ought to be affirmed."

We find some very valuable reasoning in the opinion of the Court of Queen's Bench; on page 64 we find the following:

"When I look at this bond, I have no hesitation in concluding that the association which it establishes ought not to be permitted, and that the enforcing of the bond will produce public mischief."

Page 54:

"One of the most objectionable parts of this bond is that it takes away the freedom of action of the individual to carry on the trade, and to open and close his works according as it may be for his interest or that of the public. It appears to me obviously mischievous that the parties should give up this right of judging for themselves, and place themselves and their trades under the dictation either of a majority or of a combination of delegates, which seems the same in principle."

Page 55:

"yet that the giving up their individual right of action for themselves in matters so greatly affecting the public is mischievous and dangerous in the

> extreme. I think it not to be endured that majorities and delegates, of workmen or masters, should in effect be allowed to legislate upon questions immediately affecting the happiness of the working classes and the prosperity of the trade and commerce of the whole nation."

In the recent case of

Polk et al. v. Cleveland Ry. Co., 151 N. E. 808,

decided by the Court of Appeals of Ohio, April 4th, 1925, the street railway company of Cleveland had entered into a contract to employ none but union labor. The Court says on page 810:

> "Contracts by which an employer agrees to employ only union labor are contrary to public policy when they take in an entire industry of any considerable proportion in a community so that they operate generally in that community to prevent or seriously deter craftsmen from working at their craft or workmen from obtaining employment under favorable conditions without joining a union. And such was the contract here, and it must necessarily be held in conflict with the policy of our law and illegal and void. The universal trend of authorities supports this position."

We respectfully submit that the principles there expressed are applicable here. A whole industry is affected. That is against public policy, and it would seem that anything that is against public policy must be considered a complete restraint, and thus within the anti-trust laws.

In the case at bar, Congress has legislated, decided what should be done, that did not appear in the above case, still that combination was held in restraint of

trade, against public policy and unlawful. Respondents' combination is even more so, as there is no possible excuse for taking matters away from Congress, where the Constitution places them. Congress is open to respondents if they desire any changes in or additions to the law.

The above case being in restraint of trade under the English law, if our law is the same, as it is, respondents' combination must also be in restraint of trade, as there is little difference in the facts of the two cases, the facts in this case being, if anything, more aggravated than in the *Hilton Eckersley* case. Our statute law, in so far as applicable, is as follows:

Act of July 2nd, 1890, ch. 647; 26 Stat. 209 (Sherman Act)

Sec. 1:

"Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal. Every person, who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

Sec. 2:

"Every person who shall monopolize, or attempt to monopolize, or combine, or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction there-

of, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

The facts in the complaint show respondents have a monopoly, and we do not think it will be denied by them. It is said in

U. S. v. Whiting, 212 Fed. 466:

"A 'monopoly', both at common law and under this statute, implies, I think, the control of goods or service which the public desires to obtain."

A rule of a labor organization was held to be a violation of the above sections in

Waterhouse v. Comer, 55 Fed. 149.

And combinations of labor organizations have been held within its terms in

U. S. v. Debs, 64 Fed. 724;

U. S. v. Elliott, 64 Fed. 27;

Thomas v. Cincinnati R. Co., 62 Fed. 803;

In re Grand Jury, 62 Fed. 840;

U. S. v. Workingmen's Amalgamated Council, 54 Fed. 994;

Bittner v. West Virginia Pittsburg Coal Co., 214 Fed. 22;

Lawlor v. Loewe, 235 U. S. 255.

Sec. 3:

"Every contract, combination in form of trust, or otherwise, or conspiracy, in restraint of trade or commerce in any territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such territory and another, or between any such territory or territories and any state or states, or the District

of Columbia, or with foreign nations or between the District of Columbia and any state or states or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or both said punishments in the discretion of the court."

Section 4 provides for injunctive relief at the instance of the United States.

Section 7, page 210:

"Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit including a reasonable attorney's fee."

Sec. 8:

"The word 'person' or 'persons', wherever used in this act, shall be deemed to include corporations and associations, existing under or authorized by the laws of either the United States, the laws of any of the territories, the laws of any state, or the laws of any foreign country."

Dowd v. United Mine Workers of America, 235 Fed. 1.

What is called the "Clayton Act" was passed October 15th, 1914, 38 Stat. at Large, ch. 323, to supple-

ment the Sherman Act, and on page 737 we find the following:

> "Sec. 16. That any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the anti-trust laws, including sections 2, 3, 7 and 8 of this act, when and under the same conditions and principles an injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity under the rules governing such proceedings, and upon the execution of proper bonds against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damages immediate, a preliminary injunction may issue: *provided,* that nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of the Act to regulate Commerce, approved February 4th, 1887, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission."

Sec. 4 of that Act, 38 Stat. 731, reads:

> "That any person who shall be injured in his business or property by reason of anything forbidden in the anti-trust laws may sue therefor in any District Court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained and the costs of suit, including a reasonable attorney's fee."

It will be seen that under Sec. 16, above quoted, any private person may sue in any United States

Court having jurisdiction of the parties; that is the only test, the amount is immaterial; as to damages Sec. 4 above quoted reads the same as Section 7 of the Sherman Act, and the amount involved is immaterial, both sections reading:

"without respect to the amount in controversy".

The desire of Congress to enforce the anti-trust laws as to ships is shown in the Panama Canal Act of August 12th, 1912, 37 Stat., ch. 390, page 567, as follows:

> "No vessel permitted to engage in the coastwise or foreign trade of the United States shall be permitted to enter or pass through said canal if said ship is owned, chartered, operated, or controlled by any person or company which is doing business in violation of the provisions of the Acts of Congress, approved July 2nd, eighteen hundred and ninety, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies', and the provisions of sections seventy-three to seventy-seven, both inclusive, of an Act of Congress, approved August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the government, and for other purposes,' or the provisions of any other Act of Congress, amended or supplementing the said Acts of July second, eighteen hundred and ninety, commonly known as the Sherman Anti-Trust Act, and the amendments thereto, or said sections of the Act of August twenty-seventh, eighteen hundred and ninety-four. The question of fact may be determined by the judgment of any court of the United States of competent jurisdiction in any cause pending before it to which the owner or operators of said ship are parties. Suit may be brought by any shipper or the Attorney General of the United States." * * *

We respectfully submit that respondents are operating a monopoly inhibited by the anti-trust laws of the United States, and such a monopoly as would have been void at common law, and it must not be overlooked that this Court held in

The Passenger cases, 7 Howard, 232, 407,

"The officers and crew of the vessel are as much the instruments of commerce as the ship * * *."

All carriage commerce is effected through the men, the animate, and the vessels or cars, the inanimate parts; if the whole of one, the animate part, is restrained or impeded, it would seem that the whole of commerce is restrained or impeded just as much as if the vessels, the whole of the inanimate part was restrained or impeded, as an interference with the whole of one of the essential parts, is necessarily an interference with the whole scheme.

And if the taking of turns, or equality of opportunity puts the man possessed of superior qualifications on the same plane as one of inferior qualifications, as it does, then there is no incentive to possess superior qualifications, or advance in the calling, and the whole economic scheme is bound to retrogress in skill and ability. Competition is essential to advancement, and advancement in skill and ability is peculiarly necessary in ocean commerce as the safety of life and property at sea depend upon it, and the destruction of the freedom of contract of one part of commerce is an interference with the whole thereof.

III.

THE PURPOSES OF THE UNITED STATES CONSTITUTION ARE UNIFORMITY AND WHEN CONGRESS HAS ACTED, SUCH ACTION IS EXCLUSIVE.

One of the purposes of the United States Constitution was to establish uniformity and stop the endless confusion that existed by reason of the several states undertaking to operate separately, to establish uniformity in matters relating to commerce the several states delegated to Congress the power, among other things:

> "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."
>
> Section 8, Article I, of the United States Constitution.

There is no more important section in the Constitution. A nation's prosperity largely depends upon its commerce. The importance of commerce to this nation is well established by the fact, that although this country is continually arguing against foreign entanglements, it has been drawn into three European wars since its origin for the sole purpose of protecting its right to navigate the seas and thus extend its commerce and develop its sea power.

It is proper that such an important matter should be left where the Constitution places it, and that the Acts of Congress in such behalf should be exclusive, otherwise the very uniformity that the Constitution was framed for would be destroyed. Congress hears both sides of any question, deliberates and then expresses its judgment in what becomes statutory law,

all for the purpose in so far as this case is concerned, as this Court properly said in the seaman's case of

Patterson v. Bark Eudora, 190 U. S. 168, 182:

> "Contracts with sailors for their services are, as we have seen, exceptional in their character, and may be subjected to special restrictions *for the purpose of securing the full and safe carrying on of commerce on the water.*
>
> Being so subject, whenever the contract is for employment in commerce not wholly within the State, legislation enforcing such restrictions comes within the domain of Congress, *which is charged with the duty of protecting foreign and interstate commerce.*"

It is always best, and it is the law, that any and all matters should be left where the law places them. Uniformity would be impossible otherwise, and when the law places a power in Congress, as this Court properly has always said, there can be no divided authority, its last expression of opinion on that subject being found in the recent case of

Missouri Pacific Railway Co. v. Stroud, 267 U. S. 404, 408,

as follows:

> "It is elementary and well settled that there can be no divided authority over interstate commerce, and that the Acts of Congress on that subject are supreme and exclusive."

There is no distinction as to who attempts divided authority. This Court said in

Loewe v. Lawlor, 208 U. S. 303, 304:

> "If a state, with its recognized powers of sovereignty, is impotent to obstruct interstate commerce, can it be that any mere voluntary

> associations of individuals within the limits of that state has a power which the state itself does not possess."

It follows, that if respondents are undertaking to do things that Congress has legislated upon, they are dividing authority with Congress and within the inhibitions above stated, and we will shortly show that they are.

The presumption is, that Congress has performed its duties in the above premises and done all that is necessary to do. We will show that the statutes show, as fact, that it has.

IV.

RESPONDENTS ARE DIVIDING AUTHORITY WITH CONGRESS.

In 1872 Congress took the British Merchant Shipping Act, which, coming from a maritime nation with the experience of Great Britain, must necessarily be considered as being very complete, and it was adopted as the law of this country under what is known as the Shipping Commissioners Act. There is but little change in language between the two acts, the principal ones being in the titles of the officers charged with carrying out their provisions.

The purpose of Congress in adopting laws relating to seamen was, as the Court has said and we have already shown,

> "of securing the full and safe carrying on of commerce on the water, * * * protecting foreign and interstate commerce."

The purpose of Great Britain in enacting such laws is expressed in

McLachlan's Law of Merchant Shipping, 6th Ed. pages 157, 158,

where, speaking of seamen, we find (p. 157):

> "This meritorious class of His Majesty's subjects, so essential to the power and prosperity of this country, long have been favored subjects with the British Parliament, and still in every later enactment alike their merits and their need continues to be acknowledged: by the accumulation of guarding and protecting in addition to those with which they were already surrounded." * * *
>
> "By the existing statute the use of authorized shipping masters introduced by the 8 & 9 Vict., c. 116, is continued for the purpose of facilitating the engagement and discharge of seamen, furthering in every reasonable way their interests and the honest intention of owners and masters, and of standing between dishonest designs and their accomplishments on either side." * * *

Section 277 of the Third Edition of Benedict's Admiralty says as follows, on the same subject:

> "The ship being finished and furnished, her first want is a ship's company to navigate her. Without their strength, and knowledge, and skill, and intrepidity, she must rot at the wharf, or be hurried to destruction. The ship, that by the agency of the most uncertain, capricious, and powerful element, moves with certainty and a security only surpassed by the beauty of her appearance and the grace of her motion, when under the control of a well appointed crew, becomes, in the hands of unpracticed landsmen, the victim of the first peril, and their efforts only urge her the sooner to destruction. The service of the ship's company is, therefore, the maritime

service which is entitled to the highest consideration and the greatest favor; * * *."

We will now call the Court's attention to what Congress has done:

Revised Statutes, Sec. 4507; 29 Stat. at large, C. 389, page 687:

"The Secretary of the Treasury (now Secretary of Commerce) shall assign in public buildings or otherwise suitable offices and rooms for the shipment and discharge of seamen, to be known as Shipping Commissioner's offices, and shall procure furniture, stationery, printing, and other requisites for the transaction of the business of such offices."

The complaint shows that respondents have offices for the same purpose, as follows (R. 5):

"* * * and to that end they established and now maintain offices in San Francisco and San Pedro in the State of California, at which offices almost all seamen who are employed on vessels engaged in the trade and commerce aforesaid are engaged and/or supplied by the defendants to the operators of such vessels so engaged in the trade and commerce aforesaid, the offices of the defendants in said San Francisco being located at number 330 Battery Street therein."

What the law says the Shipping Commissioner shall do in his office, and what the defendants actually do in theirs, is as follows (Section 4508 of the Revised Statutes):

"The general duties of a shipping commissioner shall be:

First. To afford facilities for engaging seamen by *keeping a register of their names* and characters."

First taking up the question of registration, respondents claim the right to do exactly the same thing in their offices, as follows (R. 6):

> "And no person will be employed by these associations unless he is *registered at their employment offices* * * *."

(R. 7):

> "To Seamen.
>
> "When you receive this book you will be given *a registered* number which will be placed in the book * * *. This *registration* number is given you when you apply for a job and has nothing to do with the number printed on the book * * *."

Registration is thus required at both offices which of itself is a burden, hence a restraint.

The purpose of registration in the Shipping Commissioner's office, is, as the statute reads:

> "To afford facilities for engaging seamen by keeping a register of their names * * *."

That seems to be solely for the benefit of commerce; that is, to have a list of names available for the operators of vessels.

One purpose of the registration in respondents' office is shown by the language requiring the registration, as follows (R. 7):

> "* * * When you leave your ship you must report to the Employment Service Bureau and get a new registered number. This registration number is given you when you apply for a job and has nothing to do with the number printed on the book * * *."

It is apparent that requirement is to force turns for employment, and Paragraph VIII of the complaint (R. 5) reads:

> "That as a condition of being employed in such trade and commerce on vessels flying the American Flag, the said defendants compel all seamen seeking such employment to register and take a number and take his turn for such employment according to such number * * *."

That must be taken as true upon exceptions, and it is true in fact. If Congress, that is charged with the duty of protecting interstate and foreign commerce, and also securing the full and safe carrying on of commerce on the water had ever thought such rules were necessary, it would have so enacted. The fact that it has not, shows they are unnecessary. Being unnecessary, the presumption is the rules must be prejudicial to commerce, as any addition to what Congress has deemed necessary must be presumed to be prejudicial, and particularly when the additions are made by an unauthorized body. The public is interested in the carrying on of commerce by sea, and it cannot be that private persons can have the right to make regulations concerning it. The uniformity that the Constitution endeavors to secure would be destroyed if they could, and it is not only always best, but imperative to allow such matters to remain where the law has placed them. And regulations made by others must be considered as made without any good end in view.

We inherited our system of laws from England, and it is always profitable to go to the fountain head to ascertain what they were, and always profitable

to refer to the Commentaries of Sir William Blackstone, to find what we inherited, and on page 125 of Volume 1 of Sharswood's Edition, we find the following:

> "nay, that even the laws themselves, whether made with or without our consent, if they regulate and constrain our conduct in matters of mere indifference without any good end in view, are regulations destructive of liberty."

That must be equally so if rules and regulations, given the force of law, are made up by unauthorized individuals. We will hereafter show how the rules destroy liberties that petitioners are entitled to have protected, and now take up the following part of the first paragraph of Section 4508 of the Revised Statutes, to wit:

> "First. To afford facilities for engaging seamen by keeping a register of their * * * characters."

That is unquestionably for the benefit of commerce, and Congress has legislated thereon as follows:

Section 4290 of the Revised Statutes, requires every vessel specified to carry what is called an "Official Log Book" and all vessels in every trade can come within the provisions of the section if they elect to sign their crews before a Shipping Commissioner. Certain entries are required to be made by the master therein, one of such entries being as follows:

> "Fourth. A statement of the conduct, character, and qualifications of each of his crew; or a statement that he declines to give an opinion of such particulars."

The method of making the entries is prescribed as follows (Sec. 4291 Revised Statutes):

> "Every entry hereby required to be made in the official log-book shall be signed by the master and by the mate, or some other one of the crew, and every entry in the official log-book shall be made as soon as possible after the occurrence to which it relates, and, if not made on the same day as the occurrence to which it relates, shall be made and dated so as to show the date of the occurrence, and of the entry respecting it; and in no case shall any entry therein, in respect to any occurrence happening previously to the arrival of the vessel at her final port, be made more than twenty-four hours after such arrival."

Section 4292 Revised Statutes:

> "If in any case the official log-book is not kept in the manner hereby required. or if any entry hereby directed to be made in any such log-book is not made at the time and in the manner hereby directed, the master shall, for each such offense, be liable to a penalty of not more than twenty-five dollars; and every person who makes, or procures to be made, or assists in making, any entry in any official log-book in respect to any occurrence happening previously to the arrival of the vessel at her final port of discharge, more than twenty-four hours after such arrival, shall, for each offense, be liable to a penalty of not more than one hundred and fifty dollars."

Section 4553 of the Revised Statutes, reads as follows:

> "Upon every discharge effected before a shipping commissioner. the master shall make and sign, in the form given in the table marked 'B', in the schedule annexed to this title, a report of the conduct, character, and qualifications of the persons discharged; or may state in such form, that he declines to give any opinion upon such

particulars, or upon any of them: and the commissioner shall keep a register of the same, and shall, if desired so to do by any seaman, give to him or indorse on his certificate of discharge a copy of so much of such report as concerns him."

The certificate of discharge is in the following form (part of Section 4612 of the Revised Statutes):

"Table B.

Certificate of Discharge.

Name and official number of ship	Port of registry	Tonnage	Description of voyage or employment	Name of seaman	Place of birth	Character	Declines to give statement of character	Capacity	Date of entry	Date of discharge	Place of discharge

I certify that the above particulars are correct, and that the above named seaman was discharged accordingly.

Dated.....day of....., eighteen hundred and.....

(Signed) .....Master

(Countersigned) .....Seaman

Given to the above named seaman in my presence this.....day of....., eighteen hundred and.....

(Signed) .....

Shipping Commissioner."

In the event that the report of the master is unfair, Congress has provided as follows (Section 4554 of the Revised Statutes):

> "Every shipping commissioner shall hear and decide any question whatsoever between a master, consignee, agent, or owner, and any of his crew, which both parties agree in writing to submit to him; and every award so made shall be binding on both parties, and shall, in any legal proceedings which may be taken in the matter, before any court of justice, be deemed to be conclusive as to the rights of the parties. And any document under the hand and official seal of a commissioner purporting to be such submission or award, shall be prima facie evidence thereof."

That prevents secret black-listing, gives a seaman a chance, is fair to both sides, and the whole system of discharge is comprehensive and as complete as human ingenuity can make it. We fail to see why any person should ask for more than is provided. No good end can be sought by doing so.

But the respondents, taking advantage of the sharp necessity of man to provide himself with necessities, have ruled as follows:

He must first get a continuous discharge book that carries a registered number.

He must then register again for his turn for employment.

When his turn comes, he then gets what is called an assignment card (R. 8) which reads:

"Assignment Card

Report to.....

Applicant must report back to the above if he does not get the job.

San Francisco.

To Captain of S. S. (name of vessel.)

Lying at (place where vessel is lying). In response to and order *we are assigning* (name of person assigned) in the capacity of (capacity here inserted).

Discharge Book No..... Registration No.....

Monthly wages .....

* * * * * * *

See other side

The other side of the card reads as follows:

"Fill out and return to this office when seaman is discharged or quits ship.

Date of entry for pay ..... Place .....

Date discharged ..... Place .....

Report ability and conduct.

Whether 'poor', 'fair', 'good' or 'very good'.

Ability .....

Cause of discharge .....

Remarks .....

Captain's signature .....

NOTICE—This card is *not* to be given to seaman but delivered or mailed direct to Employment Service Bureau."

Nothing unfairer can be thought of; the captain can write anything he pleases on the card and the seaman can not know anything about what he writes. Congress in its wisdom has decided that a seaman shall

have the right to an arbitration, and it will be noticed that the central office says "we are assigning"—selects the man itself whether the man or the employer likes it or not, and it also fixes the wages.

The foregoing card is the card "Grey in Color" referred to in the following card which the seaman also has to carry with him when respondents assign him to a vessel, to wit: a card being printed for each department, the following being for the engineer's department (R. 10):

"Engine Dept. 5000 11-8-24

To Captains or other Executive Officers.
Mr. .....
is registered in the Engine Department as .....
but he must not be employed on your ship in any capacity unless he presents an Assignment Card, *Grey in Color,* issued by us and addressed to your vessel designating the position to which we have assigned him."

Registration.
This space for number

Discharge Book
This space for number of discharge book.

Here appears citizenship or alienage.

The contract the seaman signs is set forth in full in Section 4612 of the Revised Statutes and reads in part:

> "It is agreed between the master and seamen or mariners of the ..... of which ..... is at present master, or whoever shall go as master, now bound * * * and the said crew agree to be obedient to the lawful commands of the said master, or of any person who shall lawfully succeed him, and of their superior officers in everything relating to the vessel, and the stores and cargo thereof, whether on board, in boats, or on shore; and in consideration of which service to be duly performed, the said

master agrees to pay the said crew, as wages, the sums against their names respectively expressed, and to supply them with provisions according to the annexed scale. * * * and if any person enters himself as qualified for a duty which he proves himself incompetent to perform, his wages shall be reduced in proportion to his incompetency. * * *."

It would seem that in a contract in which the personal obligations are as binding as the foregoing, both of the parties should have the right to determine who the obligors shall be, particularly when, as here, there is no opportunity of severing the relation until the end of the voyage.

It will be observed that respondents select the crew, the master is personally liable for the crew's wages, and the maritime law on the subject is as follows:

Farrell v. McCrea, 1 Dallas 304, 305.

"there was no distinction, in this respect, between the mate and a common mariner, they were alike subject to the order of the master, who could equally refuse to receive either; or, when received, was equally empowered to dismiss them, for his appointment as master gave him the sole undoubted and exclusive right of choosing every seaman under him, whatever courtesy he might be inclined to show to the recommendation of those by whom he was himself employed."

Butler v. Boston Steamship Co., 130 U. S. 527, 554:

"By virtue of his office and the rules of the maritime law, the captain or master has charge of the ship, and the selection and employment of the crew, * * *"

Respondents' rules are therefore in derogation of the decisions of this Court and the general maritime law. The master being responsible for the wages of the crew and the safety of the ship and the lives of everyone on board, he should have the common right of selecting his own crew.

There is also required to be written on the continuous discharge book regarding the seaman, "his place of birth, his age, his date of birth, his height, his weight, the color of his hair, the color of his eyes, his complexion, his rating, the total years of his sea experience, his previous employers," and his photograph is also required but not insisted on (R. 10-11).

Respondents are certainly dividing authority with Congress in the foregoing matters where they have kept within the same requirements, where they have added to such requirements, they have passed over into a realm they had no right to pass over to, as regulations of commerce, such as respondents' rules are, are within the exclusive jurisdiction of Congress, and it was the intention of Congress to and it did make its rules exclusive. Respondents are doing some of the things the law requires the Shipping Commissioner to do, as follows:

Section 4504, Revised Statutes.

> "Any person other than a commissioner under this Title, who shall perform or attempt to perform, either directly or indirectly, the duties which are by this Title set forth as pertaining to a shipping commissioner, shall be liable to a penalty of not more than five hundred dollars. Nothing in this Title however shall prevent the owner, or consignee, or master of any vessel ex-

cept vessels bound from a port in the United States to any foreign port other than vessels engaged in trade between the United States and the British North American possessions, or the West India Islands, or the republic of Mexico, and vessels of the burden of seventy-five tons or upwards bound from a port on the Atlantic to a port on the Pacific or vice versa, from performing himself so far as his vessel is concerned the duties of shipping commissioner under this Title. Whenever the master of any vessel shall engage his crew, or any part of the same in any collection district where no shipping commissioner shall have been appointed, he may perform for himself the duties of such commissioner."

There is a direct inhibition there from anyone performing any duty relating to a ship in so far as seamen are concerned, excepting only a Shipping Commissioner, a consignee or a master as to their own vessels, no stranger can, and the respondents are strangers.

Section 4515 of the Revised Statutes also prohibits what respondents are doing, as follows:

> "If any master, mate or other officer of a vessel knowingly receives, or accepts, to be entered on board of any merchant vessel, any seaman who has been engaged or supplied contrary to the provisions of this Title the vessel on board of which such seaman shall be found, shall, for every such seaman, be liable to a penalty of not more than two hundred dollars."

The purpose of the law is for a Shipping Commissioner to "afford facilities for engaging seamen", "To provide means for securing the presence on board at the proper times of men so engaged." He has an

office and it is supposed that men will go there and sit around and masters will go and see the men and that they will bargain between themselves. The Shipping Commissioner brings them together, and supplies the men in that way, to supply them otherwise is unlawful; that is how it is done under the same law in British countries, all to prevent crimping and see that vessels are supplied. Respondents however are supplying all of the men for all of the vessels on the Pacific Coast in direct violation of the law; their hereinbefore quoted literature shows that and it is so alleged in the complaint (R. 5), all in violation of the above laws.

We respectfully submit that the actions of respondents are an unwarranted and unlawful interference with the rights and duties of Congress and seamen who are the subjects of such interference and unlawful acts, and that it must be presumed that such unwarranted and unlawful interference is prejudicial to the public service respondents are engaged in, and requiring seamen to do more than the law requires of them in order to obtain necessities of life in their chosen calling, such acts are a violation of their absolute rights as individuals as defined by law. The fact that the respondents' rules operate only on seamen makes no difference, as is well said in Section 277 of the Third Edition of Benedict's Admiralty.

V.

PETITIONER AS AN ALIEN CAN MAINTAIN THIS ACTION.

Plaintiff alleges (R. 2) that he declared his intentions to become a citizen of the United States more than four years ago, and has been employed for more than twenty years as a seaman, sailor, on American vessels, and Section Eighth of the Naturalization Act of May 9th, 1918 (40 Stat. C. 389, p. 544):

> "Eighth. That every seaman, being an alien shall, after his declaration of intention to become a citizen of the United States, and after he shall have served three years upon such merchant or fishing vessels of the United States, be deemed a citizen of the United States for the purpose of serving on board any such merchant or fishing vessel of the United States, anything to the contrary in any act of Congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such after filing his declaration of intention to become such citizen; * * *"

The anti-trust laws also apply to aliens.

VI.

PETITIONER'S RIGHT TO A FREE MARKET FOR HIS LABOR IS INTERFERED WITH BY THE RESPONDENTS.

Every person has a right to a free market for his labor.

> *Hundley v. Louisville & Nashville R. Co.,* 105 Ky. 164-165.
>
> "Every person *sui juris* is entitled to pursue any lawful occupation, or calling. It is a part of his civil rights to do so. He is as much entitled

to pursue his trade, occupation, or calling and be protected in it as is the citizen in his life, liberty and property."

We concede that respondents and each of its members have an equal right with petitioner. No one of respondents or their members could be compelled without these rules to hire or employ any person. The rules compel them to, however. No one of respondents could be compelled in the absence of such rules to hire Cornelius Anderson, the petitioner, but no one of the respondents or their members have any right to have anything to say about how or in what manner said Anderson should be employed by any other respondent or any other member. When they do so, as they do herein, petitioner's rights are invaded, and he has a cause of action.

This Court said in

Eastern States Lumber Ass'n. v. U. S., 234 U. S. 600,

"An act harmless when done by one may become a public wrong when done by many acting in concert, for *it then takes on the form of conspiracy* and may be prohibited or punished, if the result be hurtful to the public *or to the individual against whom the concerted action be directed.*"

In this case appellees have combined together in the matter of hiring their men, necessarily one member of appellees surrenders his right to select a particular man, and surrenders his will in all the matters relating to the hiring of seamen to the will of the majority. *That has uniformly been held to be*

against public policy, as, if permitted, it would only be a question of time when such combination would be able to promulgate rules that would reduce workingmen to a condition of peonage.

Any man who can not earn a living at his calling except by obeying rules and regulations of an illegal body, is deprived of his property right to earn a living without due process of law.

Curran v. Galen, 152 New York 33, 37.

"Public policy and the interests of society favor the utmost freedom in the citizen to pursue his lawful trade or calling, and if the purpose of an organization or combination of workingmen be to hamper, or to restrict, that freedom, and *through contracts or arrangements with employers* to coerce other workingmen to become members of the organization and to come under its rules and conditions, under the penalty of the loss of their position, and of deprivation of employment, then that purpose seems clearly unlawful and militates against the spirit of our government and the nature of our institutions. The effectuation of such a purpose would conflict with the principles of public policy, which prohibits monopolies and exclusive privileges. *It would tend to deprive the public of the services of men in useful employments and capacities.* It would, to use the language of Mr. Justice Barrett in People ex rel. Gill v. Smith (5 N. Y. Cr. Rep. at p. 513), *'impoverish and crush a citizen for no reason connected in the slightest degree with the advancement of wages, or the maintenance of the rate.'*

Every citizen is deeply interested in the strict maintenance of *the constitutional right freely to pursue a lawful avocation* under conditions equal to all, and to enjoy the fruits of his labor, *without the imposition of any conditions not required for the general welfare of the community."*

Plant v. Wood, 176 Mass. 492-498.

"Everyone has a right to enjoy the fruits and advantages of his own enterprise, industry, skill and credit. He has no right to be protected against competition; *but he has a right to be free from malicious and wanton interference, disturbance or annoyance.* If disturbance or loss * * * come from the merely wanton or malicious acts of others, without the justification of competition or the service of any interest or lawful purpose, it then stands on a different footing."

There is no difference in principle between this case and that of *The Mogul Steamship Company, Limited, v. McGregor et al.,* 23 Queen's Bench (1889) 598.

In that case several steamship companies had combined together to control the carrying trade of tea from Hankow and Shanghai to England. The Mogul Steamship Company was refused admittance into the agreement, and thereupon sent two steamers to Hankow in order to obtain freights independently; thereupon the combination lowered freight rates to such a figure that it was impossible to carry at a profit, for the purpose of forcing plaintiff out of that business. The question of the right of plaintiff in that case to use their steamers in business was the question involved, and the learned Court, speaking through the very able and distinguished Lord Esher, says as follows:

Page 603.

"It seems to me well to consider first what view the law takes of the agreement of April 7, 1884, renewed or enlarged in 1885. In Hilton v. Eckersley (4) a bond was executed by certain masters, by which they agreed to be bound to each other

in a penalty, nominally payable to one of them, if any of them should carry on his works, in regard to amount of wages to be paid to persons employed therein, and as to the times or periods of the engagement of workpeople and the hours of work otherwise than in conformity with the resolutions of the majority of the said masters. The defendant, one of the signing masters, carried on his works contrary to a resolution of the others, whereupon he was sued on the bond for the penalty. Crompton, J., said: 'I am of the opinion that the bond is void, as being against public policy. I think that combinations like that disclosed in the pleadings in this case were illegal and indictable at common law, as tending directly to impede with the free course of trade and manufacture'."

The combination of defendants in this case is squarely within what was there declared was against public policy. In the Court of Exchequer Chamber, Lord Alderson said, quoted on the above mentioned page of 23 Queen's Bench Division,

"that the fact of the combination of masters being formed to counteract a combination of workmen cannot render the master's combination legal."

Page 605.

"But before considering that point it must be observed that the agreements held to be illegal because in restraint of trade must have been so held, not because there was any wrong done to the traders who agreed,—for they all agreed to what was done—but because there was a wrong to the public. The restraining themselves from a free course of trade was held to be wrong to the public. If that be so when parties agreed to restrain themselves, it must be much more so when they agree to do acts which will restrain

> and are intended to restrain another trader from a free course of trade. That restraint is equally a wrong to the public. The present agreement is therefore illegal and void as in restraint of trade on that ground also."

In the case at bar, the combination of the different employers means that no one shall have the right to select his own employees; he must take them by the numbers as the men apply; there is a restraint on the employer in this case and necessarily a restraint upon the employee. On page 607, 23 Queen's Bench (1889), Lord Esher further proceeds:

> "At common law," says Sir W. Erle (page 6), "every person has individually, and the public also have collectively, a right to require that the course of trade should be kept free from unreasonable obstruction." "Every person has a right under the law, as between him and his fellow-subjects *to full freedom in disposing of his own labour* or his own capital *according to his own will.* It follows that every other person is subject to the correlative duty arising therefrom, and is prohibited from any obstruction to the fullest exercise of this right which can be made compatible with the exercise of similar rights by others. Every act causing an obstruction to another in the exercise of the right comprised within this description—done, not in the exercise of the actor's own right, but for the purpose of obstruction—could, if damage should be caused thereby to the party obstructed, be a violation of this prohibition; and the violation of this prohibition by a single person is a wrong, to be remedied either by action or indictment, as the case may be. It is equally a wrong whether it be done by one or many—subject to this observation, that a combination of many to do a wrong, in a matter where the public has an interest, is a substantive offense of conspiracy."

The appeal was not allowed in that case, but the principles announced in Lord Esher's opinion are unquestionably the law as the following will show.

Erdman v. Mitchell, 207 Pa. St. 79,

"The right to the free use of his hands is the workman's property, as much as the rich man's right to the undisturbed income from his factory, houses and lands. By his works he earns present subsistence for himself and family. His savings may result in accumulations which will make him as rich in houses and lands as his employer. This right of acquiring property is an inherent indefeasible right of the workman. To exercise it, he must have the unrestricted privilege of working for such employer as he chooses, at such wages as he chooses to accept. This is one of the rights guaranteed him by our Declaration of Rights. It is a right of which the legislature cannot deprive him, one which the law of no trades union can take away from him, and one which it is the bounded duty of the courts to protect."

Berry v. Donovan, 188 Mass. 353, 355-366,

"The right to dispose of one's labor, as he will, and to have the benefit of one's lawful contract, is incident to the freedom of the individual, which lies at the foundation of the government in all countries that maintain the principles of civil liberty. Such a right can be lawfully interfered with only by one acting in the exercise of an equal or superior right which comes in conflict with the other. An interference with such a right, without lawful justification, is malicious at law even if it is from good motives and without express malice."

Jones v. Leslie, 61 Wash. 107, 110,

"It would be well to remember, in the beginning, that it is fundamental that a man has a

right to be protected in his property. This was the doctrine of the common law; is, and always has been the law in every civilized nation. It is, of necessity, one of the fundamental principles of government, the protection of property being largely one of the objects of government. For the protection of life, liberty, and property, men have yielded up their natural rights and established governments. Is, then, the right of employment in a laboring man property? That it is, we think cannot be questioned. The property of the capitalist is his gold and silver, his bonds, credit, etc., for in these he makes his living. For the same reason, the property of the merchant is his goods. And every man's trade or profession is his property, because it is his means of livelihood; because, through its agency he maintains himself and family, and is enabled to add his share towards the expenses of maintaining the government. Can it be said, with any degree of sense or justice, that the property which a man has in his labor, which is the foundation of all property and which is the only capital of so large a majority of the citizens of our country, is not property; or, at least, not that character of property which can demand the boon of protection from the government? We think not. To destroy this property, or to prevent one from contracting or exchanging it for the necessities of life, is not only an invasion on a private right, but is an injury to the public, for it tends to pauperism and crime. This relief has been granted to employers in many forms."

That is a case where an employee sued a former employer.

People v. McFarlin, 89 N. Y. Supp. 527,

"A calling, business or profession chosen to follow is property."

State v. Chapman, 55 Atlantic 94,

"Labor is property and as such merits protection. The right to make it available is next in importance to the right to life and liberty."

Slaughter House Cases, 16 Wallace 36, 127,

"The right to operate vessels and to conduct business is as much property as are the vessels themselves. All the rights which are incident to the use, enjoyment, and disposition of tangible things are property. Property is everything that has an interchangeable value." Mr. Justice Swayne in the Slaughterhouse Cases, 16 Wall. 127, L. Ed. 894, "Property may be destroyed, or its value eliminated. It is owned and kept for some useful purpose, and it has no value unless it can be used. In re Jacobs, 98 N. Y. 105."

Sailors Union of the Pacific v. Hammond Lumber Co., 156 Fed. 454;

Gleason v. Thaw, (C. C. A. 3rd Cir.) 185 Fed. 345, 347,

"Thus—man's right to labor, to carry on a lawful business, or to practice a lawful profession, may not be taken away from him *or be restricted* by any act of the state not within its police powers, *such act being considered as a deprivation of property within the constitutional inhibition, federal or state.* Such combination or conspiracy to destroy or prevent the carrying on of the business of any person within the protection of law *may be enjoined as a threatened trespass upon a property right.* * * * *The right to labor in any calling or profession in the future may be considered a property right, for the purpose of protection,* * * *. We must not allow ourselves, by a subtle verbal casuistry, to confuse a concept of the right to work or render service with the service itself when it has been rendered. *The right to render labor or service is one thing; the service itself quite a different thing.* * * *"

In

Ritchie v. People, 155 Ill. 98, 40 N. E. 454, 29 L. R. A. 79, 46 Am. St. Rep. 315,

"the court held a statute of the state prohibiting the employment of females in any factory for more than eight hours a day unconstitutional, on the ground that the right to labor and employ labor is a property right, of which the citizen cannot be deprived without due process of law."

The same was said in

Gillespie v People, 188 Ill. 176, 58 N. E. 1007, 52 L. R. A. 283, 80 Am. St. Rep. 176:

"There a law making it criminal for an employer to attempt to prevent his employees from joining labor unions, or to discharge them because of their connection with labor unions, was held unconstitutional, as being in contravention of the guaranty that no person shall be deprived of life, liberty or property without due process of law."

In this case we have a combination that imposes rules that are oppressive and calculated to and do restrain the freedom of the employee, just as the state statute restrains the freedom of the employer in the cases above cited; in those cases it was a statute, but we will show later on, that what a state cannot do an individual or combination of individuals cannot.

VII.

PETITIONER WAS ENTITLED TO INJUNCTIVE RELIEF.

Petitioner has a right to engage in interstate and foreign commerce solely under the provisions of the Shipping Commissioners Act, and petitioner having a

property right in his right to labor, an unauthorized restriction thereon is a taking of his property without due process of law, he being engaged in interstate and foreign commerce, his rights are given by Section 16 of the Act of October 15, 1914, which reads:

> "That any *person,* firm, corporation, or *association* shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, *against threatened* loss or damage by a violation of the anti-trust laws. * * *"

The amount of the loss is immaterial under that language, Clause Fifth of Section 24 of the Judiciary Act.

Gable v. Vobbegut Shoe Mach. Co., 274 Fed. 66 (syllabus):

> "Though under the Clayton Act, Sec. 16, 19 Comp. Statutes, etc., a private party may maintain a suit to enjoin acts interfering with interstate commerce, the requirement being that the acts complained of must be immediately directed against interstate commerce."

Duplex v. Deering, 254 U. S. 443, 464,

> "The Clayton Act, in Sec. 1 includes the Sherman Act in a definition of anti-trust laws and in Sec. 16 (38 Stat. 738) *gives to private parties a right to relief by injunction in any court of the United States against threatened loss or damage by a violation of the anti-trust laws* under the conditions and principles regulating the granting of such relief by courts of equity."

Atkins v. W. A. Fletcher Co., 65 N. J. Eq. 658, 666,

> "What a court of equity will protect by an injunction in a proper case are the rights of the

two parties dually interested in the conflict W. A. Fletcher Company and their employes—the right of one to employ *and the right of the other to be employed; the right of both to have a free labor market where an opportunity to make a living depends.*"

Labatt on Master & Servant, 2nd Edition, Section 2691,

"An injunction may be granted against threatened interference by unlawful means with one's existing employment, *or against the commission of acts tending unlawfully to interfere with the obtaining of employment by complainant*, where there is reason to believe that continued interference is contemplated."

VIII.

THE RULES AND REGULATIONS ARE REGULATIONS OF COMMERCE, WHICH ONLY THE CONGRESS HAS THE POWER TO MAKE.

Respondents are common carriers, and it is their duty to compete in all matters relating to the business. A man has as much right to go to sea in interstate and foreign commerce as another has to run a ship therein—one cannot engage in such business without the other. This Court said in

The Lottawanna, 21 Wallace 558, 578:

"The scope of the maritime law, and that of commercial regulation are not coterminous, it is true, but the latter embraces much the largest part of ground covered by the former. Under it Congress has regulated the registry, enrollment, license, and nationality of ships and vessels; the method of recording bills of sale and mortgages thereon; *the rights and duties of seamen;* the limitations of the responsibility of shipowners

for the negligence and misconduct of their captains and crews; and many other things of a character truly maritime * * *. Ships or vessels of the United States are creatures of the legislation of Congress. * * *"

Page 573:

"Congress having created, as it were, this species of property and conferred upon it its chief value under the power given in the constitution to regulate commerce, we perceive no reason for entertaining any serious doubt but that this power may be extended to the security and protection of the rights and titles of all persons dealing therein."

The rights and duties of seamen are a matter for Congressional legislation along, it has the exclusive power to pass regulations of interstate and foreign commerce. The powers given to Congress are found in Section 8 of Art. 1 of the Constitution. Clause 3 of that section reads:

"To regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

It has been uniformly held that that power is exclusive. Congress has the right to legislate on matters relating to seamen,

The Troop, 117 Fed. 557;

Kenney v. Blake, 125 Id. 672,

and has done so in the matters involved herein in the Shipping Commissioners' Act, with its various amendments. That act was taken almost verbatim from the British Merchant Shipping Act, in which the duties of a Shipping Master are given to the Shipping Commissioner, and the law is as follows:

When first passed the matter of regulating the shipment and discharge of merchant seamen was vested in the Circuit Courts of the United States. Its judges appointed the Shipping Commissioner, and Section 4501 of the Revised Statutes then read:

> "Such courts shall regulate the mode of conducting business in the shipping office to be established by the shipping commissioners as hereinafter provided; and shall have full and complete control over the same, subject to the provisions herein contained."

The matter was taken out of the hands of the Circuit Court in 1884 and given to the Secretary of the Treasury, then went from him to the Secretary of Commerce and Labor and from him to the Secretary of Commcree where it now is.

The following sections show that defendants are doing the very thing Congress says the Shipping Commissioner shall do, to-wit:

They have established an office for the supplying of seamen and there do what is provided for as follows; Section 4508 Revised Statutes reads:

> "The general duties of a shipping commissioner shall be:
>
> First. To afford facilities for engaging seamen by keeping a register of their names and characters.
>
> Second. To superintend their engagement and discharge, in manner prescribed by law.
>
> Third. To provide means for securing the presence on board at the proper times of men so engaged.
>
> Fourth. To facilitate the making of apprenticeships to the sea service.

Fifth. To perform such other duties relating to merchant seamen or merchant ships as are now or may hereafter be required by law."

In

Loewe v. Lawlor, 208 U. S. 303-4,

this Court said:

"It is curious to note the fact that in a large proportion of the cases in respect to interstate commerce brought to this court the question presented was of the validity of state legislation in its bearing upon interstate commerce, and the uniform course of decision has been to declare that it is not within the competency of a state to legislate in such a manner as to obstruct interstate commerce. *If a State*, with its recognized powers of sovereignty, is impotent to obstruct interstate commerce, *can it be that any mere voluntary association of individuals within the limits of that State has a power which the State itself does not possess.*"

The right of a man to work is identical with that of the trader to do business, and there are no cases to the contrary.

Page 293:

"And that combination rests on many judgments of this court, to the effect that the act prohibits any combination whatever to secure action which essentially obstructs the free flow of commerce between the States, *or restricts, in that regard, the liberty of a trader to engage in business.*"

In

Thomsen v. Cayser, 243 U. S. 66,

this Court says on page 85:

"The defendants were common carriers and it was their duty *to compete, not combine;* and

> their duty takes from them palliation, subjects them in a special sense to the policy of the law."

On page 87:

> "And it is established that the conduct of property embarked in the public service is subject to the policy of the law."

That was a steamship case where steamship companies had combined to fix freight rates.

In the case of *Wilson v. New*, 243 U. S. 332, in which case the Adamson Law, regulating wages, overtime, hours of labor, etc., on railroads came before the Supreme Court, the Court speaking of the powers of Congress on such subjects says on page 349:

> "Equally certain is it that the power has been exercised so as to deal not only with the carrier, but with its servants and to regulate the relation of such servants not only with their employers but between themselves. * * *"

Page 364. Concurring opinion of Mr. Justice McKenna:

> "I speak only of intention; of the power I have no doubt. When one enters into interstate commerce one enters into a service in which the public has an interest and subjects one's self to its behests. And this is no limitation of liberty; it is the consequence of liberty exercised, the obligation of his undertaking, and constrains no more than any contract constrains. The obligation of a contract is the law under which it is made and submission to regulation is the condition which attaches to one who enters into or accepts employment in a business in which the public has an interest."

Petitioner and those on whose behalf he sues have chosen the sea as a calling, other men have established

ship-chandleries where ship outfits are sold, others operate tugboats to move vessels around, others have groceries and butcher shops that sell to none but vessels. Suppose these same defendants should establish a rule that each of the foregoing must register their names in their office and take their turn for a sale of goods or for the use of a tow-boat, that would be held a restraint on their right to do business; or supposing they should combine and tell all shippers they must register their names and take their turn as to vessels without any choice as to the vessel, that would be held to be a restraint.

The same rule must apply to persons, without whom vessels can not operate at all—their crews. If the whole of the employers in a line of business can combine and make regulations to suit themselves, all can do it, and it would only be a question of time when all persons who work for others would be reduced to a condition of peonage.

Respondents in this case cannot complain about the regulations established by Congress.

In the case of *Patterson v. Bark Eudora*, 190 U. S. 169, the section prohibiting the payment of advance wages to seamen on foreign vessels, when such seamen were shipped in the United States, came before the Court and the question of the invasion of the liberty of contract was raised, just as defendants raise it in this case, and we respectfully quote the following language from that decision:

> "'From the earliest historical period the contract of the sailor has been treated as an exceptional one, and involving, to certain extent, the

surrender of his personal liberty during the life of the contract. Indeed, the business of navigation could scarcely be carried on without some guaranty, beyond the ordinary civil remedies of contract, that the sailor will not desert the ship at a critical moment, or leave her at some place where seamen are impossible to be obtained—as Molloy forcibly expresses it, "to rot in her neglected brine". Such desertion might involve a long delay of the vessel while the master is seeking another crew, an abandonment of the voyage, and in some cases, the safety of the ship itself. *Hence the laws of nearly all maritime nations have made provisions for securing the personal attendance of the crew on board, and for their criminal punishment for desertion, or absence without leave during the life of the shipping articles.*

'If the necessities of the public justify the enforcement of a sailor's contract by exceptional means, justice requires that the rights of the sailor be in like manner protected. The story of the wrongs done to sailors in the larger ports, not merely of this nation but of the world, is an oft-told tale, and many have been the efforts to protect them against such wrongs. One of the most common means of doing these wrongs is the advancement of wages. Bad men lure them into haunts of vice, advance a little money to continue their dissipation, and, having thus acquired a partial control and by liquor dulled their faculties, place them on board the vessel just ready to sail and most ready to return the advances. When once on shipboard and the ship at sea the sailor is powerless and no relief is availing. It was in order to stop this evil, to protect the sailor, and not to restrict him of his liberty, that this statute was passed. And while in some cases it may operate harshly, no one can doubt that the best interests of seamen as a class are preserved by such legislation.

Neither do we think there is any trespass on the rights of the States. No question is before

us as to the applicability of the statute to contracts of sailors for services wholly within the State.' "

IX.

PETITIONER HAD A RIGHT TO BRING A CLASS SUIT.

Equity Rule 38;
Beatty v. Kurtz, 2 Peters 563, 583-4;
Callon v. Hope, 75 Fed. 758;
Duplex v. Deering, 254 U. S. 443;
Gieske v. Anderson, 77 Cal. 247;
Wheelock v. First Presbyterian Church, 119 Id. 477;
Florence v. Helms, 136 Id. 613.

X.

THE EFFECT OF THE RULES AND REGULATIONS OF RESPONDENTS.

The taking of turns for employment, that is only obtaining employment by number, is destructive of competition not only as to the employee but also as to the employer, neither has any right of selection, and that would eventually lessen the standard of efficiency, as an inefficient workman would stand just as much chance of employment as a skilled one, and there would be no incentive to acquire skill.

The rules again say that no employment would be obtained by any one who failed to obey them; that is in effect a blacklist.

In the case of

Gompers v. Bucks Stove & Range Company, 221 U. S. 418,

this Court says:

> "In Loewe v. Lawlor, 208 U. S. 274, the statute was held to apply to any unlawful combination resulting in restraint of interstate commerce. In that case the damages sued for were occasioned by acts which among other things, did include the circulation of advertisements. But the principle advanced by the Court was general. It covered any illegal means by which interstate commerce is restrained, *whether by unlawful combinations of capital, or unlawful combinations of labor;* and we think also whether the restraint be occasioned *by* unlawful contracts, trusts, pooling arrangements, *blacklists*, boycotts, *coercion, threats, intimidation* and whether they be made effective, in whole or in part, by acts, words or printed matter."

The above being quoted from *In re Debs*, 158 U. S. 564.

The complaint clearly shows that defendants require a seaman to register and carry a book before he can obtain employment, and plaintiff alleges he cannot obtain work unless he does so. Such requirements are necessarily the obtaining of permission to work, the obtaining of permission from the whole body before he can work for one, and the whole body, irrespective of interference with interstate and foreign commerce, legally have no right to specify the requirements under which a seaman shall work for one of their members.

That the continuous discharge system can be used and has been used for blacklisting purposes is best evidenced by the fact that the Lake Carriers' Association had a similar system, a report on which is to be found in Pamphlet Whole Number 235, issued by the

U. S. Department of Labor Bureau Statistics in 1918, under the title "Employment System of the Lake Carriers' Association". An investigation of the system was ordered by the Bureau and the conclusions of the investigator were as follows, pages 31 and 32 of said report and pamphlet:

> "This evidence of the continuing dissatisfaction of the sailors with their jobs on the Lakes, in addition to the evidence herewith submitted showing the existence of a system of practically compulsory registration and continuous-service records which actually operate as a black list, at the best, holds threats of the black list over the seamen, indicates pretty clearly that there is something radically wrong with the present system of labor employment on the Lakes. Many seamen are bitterly antagonistic to this 'welfare-plan' shipping system. This opposition is partly due to the fact that, apart from its merits or demerits, they feel that it is a system imposed upon them—a plan in the operation of which they have no part. They consider it undemocratic and feel that it seriously infringes upon their freedom of action and upon their right to organize among themselves for the betterment of the conditions upon which they work."

Matters became so serious on the Lakes owing to the discharge book system which was practically about the same as the book in this case as shown by the report, excepting that on the Lakes, the carriers always denied that seamen were compelled to go to their offices to get work, and in this case the appellees flatly say in effect he must go there or he cannot get work, and the complaint alleges he must go there; that finally the United States Shipping Board appointed ex-Governor Bass of New Hampshire to in-

vestigate, and upon the coming in of his investigation decided as follows, page 33 of Report:

> "Upon all the evidence received this board has decided that the discharge book is undesirable and should be abolished. It is believed, however, that certain features of the discharge book system are of value both to management of the shipping industry and to the men."

There is some evidence, or statement in the report that it was decided to continue it under government supervision. However, the law provides for the same thing in the certificate of discharge.

In the Report of the United States Shipping Board on Work, Wages and Industrial Relations during the Period of the War, issued in 1919, we find the following on page 24:

> "After an investigation carried out in accordance with this promise the Shipping Board announced on November 21, 1917, that what had been known as the continuous discharge book should be abolished. In its place individual certificates of discharge might still be issued; but only special data could be given as would describe the seaman and the nature of his service, thereby eliminating the objectionable 'personal opinion' feature, or any other notation that might indicate a seaman's union activities. By this regulation it was hoped that the good features of the Lake Carriers' Welfare Plan might be saved, but that the possible use of its records as a 'blacklisting device' might be prevented. * * *
>
> With the opening of Lake navigation in the spring of 1918, it was found that the labor issues in that section were assuming a much more serious form. The Shipping Board was informed that the Lake Carriers' Association has substituted for the discharge book a 'certificate of

membership', with a pocket in it, as a container for the individual discharge certificates, and that all the papers had as before to be produced and deposited at the time of employment. It was believed by the men that the new device could be made to serve exactly the same purpose as the old."

Page 26:

"In an effort to ease this tense situation the Shipping Board had already taken up the discharge system, and during the months of June and July suggested and then directed that the discharge certificate should not be in book form or accompanied by a container, and that it should state on its face that it was the property of the man to whom it was issued. Nor was the holder of the certificate to be required to deposit it or produce it at the time of hiring. It was declared to be 'the intent of this finding that seamen should be employed solely with reference to their fitness for the work and not with reference to membership in Welfare Plan, nor with reference to affiliation with or activity in any union'."

We have already called the Court's attention to the fact, that the Shipping Commissioners' Act is copied from the British Merchant Shipping Act, the certificate of discharge is the discharge that has been used and under which the enormous British merchant fleet has been built up and operates, any innovations would seem to be clearly unnecessary, and the innovation in this case is a clear blacklisting scheme, and is unlawful as it restrains both the seamen from freely engaging in interstate and foreign commerce, and also the individual operator of a vessel who is a member of either of appellee organizations.

The language of appellees is:

> "and no person will be employed by these associations unless he is registered at their employment offices and has in his possession this Certificate and Discharge."

There is coercion, threats and intimidation in that language within the inhibition this Court has laid down in *Gompers v. Bucks Stove and Range Company*, above cited.

That the combination complained of herein is a combination in restraint of one of the instrumentalities of interstate and foreign commerce to freely engage therein cannot be questioned.

And no good reason can be shown why such instrumentality is not entitled to injunctive relief. Section 16 of the Clayton Act says "any person" may obtain such relief. To hold otherwise would be to put the rights of property above the rights of the man.

Supposing a seaman should accumulate sufficient in his calling to acquire a vessel and such vessel was restrained as the seamen are here, can it be possible that in the transition of the fruits of his labor over into a piece of observable property, rights attached to it that were not possessed while he was acquiring it? That a piece of property has a right superior to the individual? The right of both *acquiring* and *enjoying* property are generally conceded to be equal rights before the law.

XI.

EFFECT OF THE SHIPPING COMMISSIONER'S ACT.

There is nothing in the Shipping Commissioner's Act that compels any shipowner or master of a vessel to take any seaman the Shipping Commissioner may designate. It is simply a public employment office established to facilitate the operation of vessels, where a ship-master can go to look over the register of names and pick out those he may want, and find a crew where otherwise he might not be able to find one. England has built up her enormous merchant marine under the system, and again, the scheme is to protect both the seaman and commerce within the principles explained in *Patterson v. The Bark Eudora,* heretofore cited. Ships have run from the earliest periods of history to the present without such rules and no necessity for them at this time appears.

The following are analogous sections of the law on the subject:

R. S. Sec. 4501:

> "The Secretary of Commerce shall appoint a commissioner for each port of entry, which is also a port of ocean navigation, and which, in his judgment, may require the same; such commissioner to be termed a shipping commissioner, and may from time to time, remove from office any such commissioner whom he may have reason to believe does not properly perform his duty. * * *"

British Merchant Shipping Act:

> "146. The Board of Trade may grant to such persons as it thinks fit licenses to engage or supply seamen or apprentices for merchant ships in the United Kingdom, to continue for such periods,

to be upon such terms and to be revocable upon such conditions as such board thinks proper."

R. S. Sec. 4504:

"Any person other than a commissioner under this Title who shall perform or attempt to perform, either directly or indirectly, the duties which are by this Title set forth as pertaining to a shipping commissioner, shall be liable to a penalty of not more than five hundred dollars. * * *"

British Merchant Shipping Act, Sec. 147:

"(1) If any person not licensed as aforesaid, other than the owner or master or mate of the ship or some person who is bona fide the servant and in the constant employ of the owner, or a Shipping Master duly appointed as aforesaid, engages or supplies any seaman or apprentice to be entered on board any ship in the United Kingdom, he shall for each seaman or apprentice so engaged or supplied, incur a penalty not exceeding twenty pounds."

The owner cannot even do as above under our law except in the trade between the United States and the British North American Possessions, or the West India Islands, or the Republic of Mexico under R. S. 4501.

What Congress intended to do is very clear, it turned the whole matter of the supplying, engaging and discharge of seamen over to the Shipping Commissioner, defined his duties in Section 4508 of the Revised Statutes, and then enacted Sub. (3) of Section 147 of the British Merchant Shipping Act as Section 4515 of the Revised Statutes, imposing a penalty of two hundred dollars for the receipt of each seaman

on board contrary to the provisions of the Shipping Commissioner's Act.

We respectfully submit that the decision herein should be reversed.

Dated, San Francisco,
September 24, 1926.

H. W. HUTTON,
Attorney for Petitioner.

In the Supreme Court

OF THE

United States

Office Supreme Court, U. S.
FILED
OCT 11 1926
WM. R. STANSBURY
CLERK

OCTOBER TERM, 1926

No. 306

CORNELIUS ANDERSON, suing on behalf of himself and all other seamen employed in Interstate and Foreign Commerce by sea on vessels flying the flag of and engaged in the Merchant Service of the United States of America and sailing to and from ports on the Pacific Coast of the said United States,

Petitioner,

vs.

SHIPOWNERS ASSOCIATION OF THE PACIFIC COAST, PACIFIC AMERICAN STEAMSHIP ASSOCIATION, their members, associates, agents and servants, JOHN DOE and RICHARD ROE,

Respondents.

BRIEF FOR RESPONDENTS.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

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Subject Index

	Page
I. Statement of the case	2
II. Questions involved	3
III. Argument	4
(a) Do the acts of the defendants violate subdivision 3, Section 8, Article I, Constitution of the United States?	4
(1) Theory of the complaint	4
(2) The regulations do not violate the commerce clause of the constitution	5
(3) Decision of the Supreme Court of the United States	6
(b) Do the acts of the defendants violate the Shipping Commissioner's Act?	6
(1) The theory of the complaint is that the private hiring of seamen is illegal	7
(2) The Shipping Commissioner's Act	7
(3) Purpose and scope of the act	9
(4) The act does not regulate negotiations leading up to employment	9
(5) The provision requiring the Shipping Commissioner to afford facilities for employing seamen is not exclusive	10
(6) Particular sections relied upon by plaintiff	10
(7) Decisions establishing the legality of a private employment bureau	13
(c) Do the acts of the defendants violate the Sherman or Clayton Anti-Trust Acts?	15
(1) The authority of Congress under the commerce clause of the constitution is limited to the regulation of commerce	16
(2) The Sherman and Clayton Acts	16
(a) Only direct restraints of interstate commerce violate the anti-trust laws	17
(1) Cases involving indirect restraints upon commerce	17

Page

(2) Principle established by these decisions 19

(3) Further cases involving indirect restraints of commerce 19

(b) Application of decisions to the present case 21

(c) Summary of discussion 22

(3) Decisions of lower courts 23

(4) The regulations are not shown to have any effect on commerce 27

(d) Do the acts of the defendants constitute an unlawful restraint of trade or competition?... 27

(1) The bill of complaint does not state a case within the jurisdiction of the Federal Court 28

(2) The bill of complaint fails to set forth a combination in restraint of trade, illegal either at common law or in equity..... 30

(a) This case is not one of the recognized classes of restraints of trade at common law 30

(3) The policy of the law..... 32

(a) Reasonable restraints of trade are not illegal 32

(b) The present agreement 34

(c) Its operation 36

(d) The complaint 36

(e) Legality of the agreement 37

(f) The effect 39

(4) No discrimination is shown..... 39

(5) Conclusion 40

Table of Authorities Cited

Decisions.	Pages
Adair v. U. S., 208 U. S. 161	19
Anderson v. Shipowners Assn., 10 Fed. (2nd) 90	15, 26
Anderson v. U. S., 171 U. S. 604	19
Board of Trade of Chicago v. U. S., 246 U. S. 231	19, 32
Clay v. Field, 138 U. S. 464	29
El Paso Water Co. v. El Paso, 152 U. S. 157	29
Gibbons v. Ogden, 9 Wheat. 226	5
Henderson v. Carbondale Co., 140 U. S. 253	29
Hopkins v. U. S., 171 U. S. 578	19
Industrial Assn. of San Francisco v. U. S., 268 U. S. 64	18
National Assn. of Window Glass Mfrs. v. U. S., 263 U. S. 403	19, 33
Paine Lumber Co. v. Neal, 244 U. S. 459	13
Pinel v. Pinel, 240 U. S. 594	29
Scott v. Donald, 165 U. S. 107	29
Stafford v. Wallace, 258 U. S. 495	22
Standard Oil v. U. S., 221 U. S. 1	31, 33
Street v. Shipowners Association, et al., 263 U. S. 334	5
Street v. Shipowners Association, et al., (C. C. A.) 299 Fed. 5	13, 14, 23, 40
Street v. Shipowners Association, et al., (D. C.) Trans. Records U. S. C. C. A. 9th Cir. Case No. 4173	13, 23, 30
Swift & Co. v. U. S., 196 U. S. 375	22
Tillbury v. Oregon Stevedoring Co., (C. C. A.) 7 Fed. (2d Series) 1	23, 25
Tillbury v. Oregon Stevedoring Co., (D. C.) Trans. Records U. S. C. C. A. 9th Cir. Case No. 4542	24
United Leather Workers v. Herket & Meisel Trunk Co., 265 U. S. 457	18
United Mine Workers v. Coronado Coal Co., 259 U. S. 344	17
U. S. v. E. C. Knight, 156 U. S. 1	17

Pages

Waite v. Santa Cruz, 184 U. S. 302 29
Wheless v. St. Louis, 180 U. S. 379 29

CONSTITUTION OF UNITED STATES.

Sub. 3, Section 8, Article I, Constitution of U. S. 3, 4, 5, 16

SHIPPING COMMISSIONER'S ACT.

R. S. 4504 (9 Fed. St. Ann., 2d Ed., p. 133) 12
R. S. 4507 (9 Fed. St. Ann., 2d Ed., p. 134) 10, 11
R. S. 4508 (9 Fed. St. Ann., 2d Ed., p. 134) 8, 10, 12
R. S. 4511 (9 Fed. St. Ann., 2d Ed., p. 139) 8
R. S. 4512 (9 Fed. St. Ann., 2d Ed., p. 142) 8
R. S. 4514-15 (9 Fed. St. Ann., 2d Ed., pp. 143-4) 8
R. S. 4524-48 (9 Fed. St. Ann., 2d Ed., pp. 151-181) 8
R. S. 4549-53 (9 Fed. St. Ann., 2d Ed., pp. 181-4) 8
R. S. 4554-91 (9 Fed. St. Ann., 2d Ed., pp. 184-214) 8
R. S. 4696-4611 (9 Fed. St. Ann., 2d Ed., pp. 215-229) .. 8
R. S. 4610 (9 Fed. St. Ann., 2d Ed., p. 228) 13

SHERMAN ACT.

Act July 2, 1890, Ch. 647; 26 Stat. L. 209 (9 Fed. Stat. Ann., 2d Ed., p. 644) 16

CLAYTON ACT.

Act Oct. 15, 1914, Ch. 323; 38 Stat. L. 730 (9 Fed. Stat. Ann., 2d Ed., p. 730) 16

JUDICIAL CODE.

Chap. II, Sec. 24 28

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1926

No. 306

CORNELIUS ANDERSON, suing on behalf of himself and all other seamen employed in Interstate and Foreign Commerce by sea on vessels flying the flag of and engaged in the Merchant Service of the United States of America and sailing to and from ports on the Pacific Coast of the said United States,

Petitioner,

vs.

SHIPOWNERS ASSOCIATION OF THE PACIFIC COAST, PACIFIC AMERICAN STEAMSHIP ASSOCIATION, their members, associates, agents and servants, JOHN DOE and RICHARD ROE,

Respondents.

BRIEF FOR RESPONDENTS.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

STATEMENT OF THE CASE.

This suit is brought by Cornelius Anderson, a sailor, to enjoin two associations of shipowners from enforcing certain rules and regulations followed by them in the employment of seamen.

Anderson is a sailor working upon vessels sailing in interstate commerce from Pacific Coast ports. He is suing on behalf of himself and all other seamen similarly employed.

The Shipowners Association of the Pacific Coast is a membership corporation. The Pacific American Steamship Association is an unincorporated association. The members of these organizations own or control nearly all vessels sailing from ports on the Pacific Coast.

The bill of complaint alleges that the defendant associations have combined to restrain the freedom of all seamen sailing from Pacific Coast ports in interstate commerce. To that end, it is alleged, they maintain employment offices at which almost all of the seamen in the commerce aforesaid are employed. As a condition of being employed the complaint alleges that,

> "the defendants compel all seamen seeking employment to register and take a number and take his turn for such employment according to such number".

This is the substance of the complaint. Reference is made in the complaint to a certificate, continuous

---

NOTE: For convenience the words "plaintiff" and "defendants" are used throughout instead of "petitioner" and "respondents".

discharge book, and assignment card, but these are unimportant, being merely the instrumentalities used to carry into effect the regulations set forth.

It is alleged that the plaintiff Anderson sought employment at defendants' employment office but was refused registration or employment; that later he was engaged for work by the mate of the ship "Caddopeak" but was prevented from working by the orders of the company that no man should be employed except through the employment office of the defendants.

Plaintiff sued for damages and to enjoin the defendants from doing or performing any of the acts against which complaint is made.

Defendants interposed motions to dismiss, testing the sufficiency of the complaint.

The District Court ordered the bill dismissed.

The Circuit Court of Appeals for the Ninth Circuit affirmed this decision.

The matter is now before this Court upon writ of certiorari.

QUESTIONS INVOLVED.

The complaint alleges that the acts of defendants violate subdivision 3 of Section 8 of Article I of the Constitution of the United States. They are also alleged to violate the Act of Congress of June 7, 1872, commonly known as the Shipping Commissioner's Act. The acts of defendants are further alleged to restrain the freedom of plaintiff and all other seamen engaging in interstate commerce.

The case, then, divides itself into four questions:

(1) Do the acts of the defendants violate subdivision 3, Section 8, Article I, Constitution of the United States?

(2) Do the acts of the defendants violate the Shipping Commissioner's Act?

(3) Do the acts of the defendants violate the Sherman or Clayton Anti-Trust Acts?

(4) Do the acts of the defendants constitute an unlawful restraint of trade or competition?

These will be taken up in the order mentioned.

ARGUMENT.

DO THE ACTS OF THE DEFENDANTS VIOLATE SUBDIVISION 3, SECTION 8, ARTICLE I, CONSTITUTION OF THE UNITED STATES?

Subdivision 3, Section 8, Article I of the Constitution of the United States, is commonly known as the "commerce clause" of the Constitution. It provides that Congress shall have power "to regulate commerce with foreign Nations and among the several States, and with the Indian Tribes".

Theory of the Complaint.

The theory of the complaint is that the acts of defendants constitute "regulations" of commerce which Congress alone is empowered under the Constitution to make or enforce. (Assignment of Errors No. 7, Trans. p. 24.) (Bill of Complaint par. X.)

The Regulations Do Not Violate the Commerce Clause of the Constitution.

Article I, Section 8, subdivision 3, of the Constitution gives to Congress the right to regulate interstate commerce. The grant of this power is complete and exclusive. It carries with it the prohibition of the exercise of the same power by any of the states.

Gibbons v. Ogden, 9 Wheat. 226.

But it was never intended, and has never been held, to prohibit the private regulation by interstate carriers of their own business.

A regulation by a group of shipowners of the manner in which they will hire seamen is not an exercise of the power granted to Congress by the Constitution.

Decision of the Supreme Court of the United States.

The identical question was briefly decided contrary to the contention of plaintiff by this Court in the case of *Alfred Street v. Shipowners Association, et al.,* reported at 263 U. S. 334. There, suit was brought by Street, a seaman, against the present defendants to enjoin the regulations complained of in the present suit. The District Court dismissed the bill. An appeal was taken direct to the Supreme Court of the United States. Mr. Justice McKenna, expressing the unanimous opinion of the Court, declared the Court to be without jurisdiction. He said:

> "According to section 238 of the Judicial Code, appeal or error may be prosecuted from the district courts when their jurisdiction is in issue; in prize cases; *in any case that involves the construction or application of the Constitution of the United States;* in any case in which the constitutionality of any law of the United States

> or the validity or construction of any treaty is drawn in question; in any case in which the constitution or law of a state is claimed to be in contravention of the Constitution of the United States.
>
> "It is manifest that the present case falls within none of the enumerated cases, *whether the regulations of the Associations be regarded as an exercise of the power, which it is contended Congress alone possesses*, or which has conferred upon the shipping commission, or be regarded as violations of the anti-trust law." (Italics are ours.)

The case was ordered transferred to the Circuit Court of Appeals.

The decision of this Court is conclusive. If the case had involved a violation of the "Commerce Clause" of the Constitution this Court would have had jurisdiction under Section 238 of the Judicial Code. This Court declared that it was without jurisdiction. The Constitution of the United States is not here involved.

DO THE ACTS OF THE DEFENDANTS VIOLATE THE SHIPPING COMMISSIONER'S ACT?

The next contention of plaintiff is that the acts and regulations of defendants violate the Shipping Commissioner's Act.

The Shipping Commissioner's Act, in general, regulates the contract of shipment under which seamen are engaged. More specifically, it declares that the shipping commissioner shall superintend the engagement and discharge of seamen in the manner provided by law, and provides that the actual execution

of the articles of shipment and discharge shall be in the presence of the commissioner.

The Act further requires the commissioner to afford facilities for engaging seamen by keeping a register of their names and characters.

The Theory of the Complaint is That the Private Hiring of Seamen is Illegal.

At the outset it is to be observed that the combination of the defendants here is immaterial. Under the Shipping Commissioner's Act, if the *private hiring* of a seaman is unlawful, it is unlawful whether by a single shipowner or by a combination of shipowners. The illegality, if at all, is in the private hiring. The combination is immaterial.

It is also to be noted that the rules and regulations of the defendants operate uniformly upon all seamen, and that there is no showing of any discrimination in favor of or against any one.

The sole question therefore is the legality under the Shipping Commissioner's Act of the private hiring of seamen.

The Shipping Commissioner's Act.

The Shipping Commissioner's Act is long, consisting of more than one hundred sections. We therefore confine ourselves to a general survey of the Act and to a particular consideration of those sections specifically referred to and relied upon by plaintiff.

The first division of the Act provides for the *creation of the office of shipping commissioner,* and prescribes the *duties and powers* of the commissioners.

These are, generally, to superintend the engagement and discharge of seamen, and to afford facilities for engaging seamen by keeping a register of their names and characters (R. S. 4508) (9 Fed. St. Ann., 2nd Ed. p. 134).

Shipment is the subject of the next division. It prescribes the form of shipping articles (R. S. 4511) (9 Fed. St. Ann., 2nd Ed. p. 139); requires that they be executed by the seamen in the presence of the commissioner (R. S. 4512) (9 Fed. St. Ann., 2nd Ed. p. 142); and provides penalties for violations (R. S. 4514-15) (9 Fed. St. Ann., 2nd Ed. pp. 143-4).

Wages and effects of seamen are next provided for in the Act (R. S. 4524-48) (9 Fed. St. Ann., 2nd Ed. pp. 151-181).

Then follow regulations governing *discharge*. The Act requires that the discharge shall be in the presence of the commissioner; that the master shall render an accounting prior to discharge, and that the parties upon discharge shall execute mutual releases (R. S. 4549-53) (9 Fed. St. Ann., 2nd Ed. pp. 181-4).

Provision is then made for the *protection and relief of seamen*, the Act dealing in general with the seaworthiness of vessels, their provisions, medicine, fuel, the clothing provided, and the watches and duties of the seamen (R. S. 4554-91) (9 Fed. St. Ann., 2nd. Ed. pp. 184-214).

Offenses and their punishment are finally set forth (R. S. 4596-4611) (9 Fed. St. Ann., 2nd Ed. pp. 215-229).

This in brief is the Shipping Commissioner's Act.

Purpose and Scope of the Act.

A reading of the Act in its entirety reveals its purpose and scope. The purpose of the Act is plain. It is to define the rights and duties of seamen. The Act sets forth these rights and duties, and contains provisions insuring their enforcement. The scope of the Act is equally plain. *It extends from the execution of the articles of shipment to the execution of the discharge, and governs all of the matters intervening.* It provides that when a seaman is engaged, his contract shall be according to a certain form and shall be executed in a certain manner. It further regulates the conditions under which he shall work. Finally, it provides that the seaman shall be discharged in a certain manner.

The Act, however, extends no further than this. The limits of operation of the Act are the execution of the articles of shipment at the commencement of the employment and the execution of the discharge at its termination. The Act governs only the matters intervening.

The Act Does Not Regulate Negotiations Leading up to Employment.

Nothing in the Shipping Commissioner's Act regulates the negotiations leading up to the execution of the articles of shipment. The parties are left free to choose with whom they deal, in what manner, at what time, and upon what conditions.

The Provision Requiring the Shipping Commissioner to Afford Facilities For Employing Seamen is Not Exclusive.

The Act, it is true, requires the shipping commissioner to afford facilities for engaging seamen, but neither expressly nor impliedly does it make such a mode of employment *exclusive or compulsory.* Nowhere in the Shipping Commissioner's Act can be found a *prohibition* of the private solicitation or employment of seamen. A reading of the Act indicates clearly that such was not its purpose.

Particular Sections Relied Upon by Plaintiff.

The following sections of the Shipping Commissioner's Act are relied upon by plaintiff:

> Sec. 4507 — The Secretary of the Treasury shall assign in public buildings or otherwise procure suitable offices and rooms *for the shipment and discharge of seamen*, to be known as shipping commissioners' offices, and shall procure furniture, stationery, printing and other requisites for the transaction of the business of such offices. (Italics are ours.)
>
> Sec. 4508 — The general duties of a shipping commissioner shall be:
>
> First. *To afford facilities for engaging seamen by keeping a register of their names and characters.*
>
> Second. *To superintend their engagement and discharge in manner prescribed by law.*
>
> Third. To provide means for securing the presence on board at the proper times of men who are so engaged.
>
> Fourth. To facilitate the making of apprenticeships to the sea service.
>
> Fifth. To perform such other duties relating to merchant seamen or merchant ships as are

now or may hereafter be required by law. (Italics are ours.)

The language of these sections is clear and unambiguous. Giving to them a reasonable construction, it is apparent that the private hiring of seamen does not violate either section.

Section 4507 provides for quarters for the commissioner and establishes a place where the actual execution of the articles of shipment and discharge shall occur in his presence. It also establishes quarters where facilities are afforded for engaging seamen and the register of their names kept. It *does not* prohibit the maintenance of a private employment bureau for the hiring of seamen.

The requirement of the first subdivision of Section 4508 that the Shipping Commissioner shall afford facilities for engaging seamen by keeping a register of their names and character does not constitute a *prohibition* against private hiring. By this section seamen are merely afforded facilities of which they may avail themselves if they choose. There is not the slightest intimation that the facilities provided for by the section were intended to be exclusive or compulsory or that it is unlawful to obtain employment except by use of such facilities.

The second subdivision of Section 4508 states that the Shipping Commissioner shall superintend the engagement and discharge of seamen in the manner provided by law. The "manner provided by law" is as follows: The statute provides that the articles

of shipment and the discharge shall be according to certain prescribed forms. Upon the formal execution of the articles of shipment in the presence of the commissioner, the commissioner may examine the articles to see that they comply in all respects with the requirements of the Act. He may also satisfy himself that the seamen understand the articles, and that they execute them free from fraud, undue influence or mistake.

Upon the formal execution of the discharge in the presence of the commissioner, the commissioner may ascertain whether the parties have in all respects complied with the requirements of the Act during the voyage.

Thus the statute sets forth the complete scheme by which the Shipping Commissioner is to superintend the engagement and discharge of seamen. Nothing more is necessary.

Nothing contained in the second subdivision of Section 4508 just referred to, prohibits the private hiring of seamen. On the contrary, the section *contemplates* this by providing for its *superintendence* and *regulation* by the commissioner.

Section 4504 (R. S. 4504) (9 Fed. St. Ann., 2d Ed. p. 133) as is demonstrated by its title, merely provides a "penalty for unlawfully acting as Commissioner."

Obviously the defendants do not purport to act in any official capacity. They are not performing or attempting to perform any of the duties of the Commissioner.

Moreover, Section 4504 merely prescribes a *penalty* for a violation of the Shipping Commissioner's Act and does not afford a basis for injunctive relief or for the recovery of damages. (See R. S. 4610.) (9 Fed. St. Ann., 2d Ed. p. 228.)

Paine Lumber Co. v. Neal, 244 U. S. 459.

The remaining section of the Act relied upon, to-wit, Section 4515, reads as follows:

> "If any master, mate or other officer of a vessel knowingly receives or accepts to be entered on board of any merchant vessel any seaman who has been *engaged or supplied* contrary to the provisions of this title, the vessel on board of which such seaman shall be found shall, for every such seaman, be liable to a penalty of not more than $200."

This section merely prescribes the penalty for shipping a seaman who has not signed articles before the commissioner. A reading of the Act in its entirety permits no other construction.

Decisions Establishing the Legality of a Private Employment Bureau.

Reference has already been made to a prior suit entitled *Alfred Street v. The Shipowners Association, et al.* (*Street v. Shipowners Assn.,* 299 Fed. 5). That suit was brought by a seaman against the present defendants in this action to enjoin the same practices and regulations as are here involved.

The District Court dismissed the bill (Transcript of Record United States Circuit Court of Appeals, Ninth Circuit, *Street v. Shipowners Assn.,* case No. 4173, Trans. p. 14.)

The language of the opinion of the District Court is as follows:

> "In the execution by the defendants of the scheme of employment and discharge to which the plaintiff objects, they may possibly violate some of the provisions of the Shipping Commissioners' Act (Rev. Stat. U. S., Sec. 4501, et seq.) but not necessarily. This Act neither provides nor contemplates compulsory service or employment: The Commission is without authority to require a seaman to take a job or the owner to furnish one. It is entirely optional with the parties to say whether they desire under any circumstances to engage with each other, but if they do so desire they must conform to certain requirements prescribed by law—which it is the duty of the Commission to see are not ignored or violated. That is the scope of the Act. *To be sure, the Commissioner and his associates may also furnish some assistance as a sort of employment agency in a popular sense, but their service in that respect is not exclusive. Such bureaus may be maintained by either seamen or employers independently and may render material assistance without impinging upon either the letter or the spirit of the statutes.*" (Italics are ours.)

Upon the appeal of that case the Circuit Court of Appeals affirmed the decision of the District Court (*Street v. Shipowners Assn.*, 299 Fed. 5), saying:

> "*We agree with the Court below that the services of the Shipping Commissioner under the 'Shipping Commissioners Act is not exclusive. Such bureaus may be maintained by either seamen or employers independently and may render material assistance without impinging on either the letter or the spirit of the statute'.*" (Italics are ours.)

In the present case *Anderson v. Shipowners,* 10 Fed. (2nd) 96, the Circuit Court of Appeals for the Ninth Circuit again considered the question and expressed itself as follows:

> "It is also contended that the practices complained of violate the federal statute defining the manner in which seamen are to be employed and the nature of the shipping contract. Sections 4508, 4514, 4515, 4551 and 4612, R. S., Sections 8297, 8304, 8305, 8340 and 8392, Comp. Stat. *The registration of seamen by the defendants and the arrangements made for their employment are preliminary to the execution of the form of contract required by the statute.* It does not appear from the bill that the defendants have taken seamen to sea without execution before a commissioner of the statutory contract or that defendants have otherwise violated the above statutes." (Italics are ours.)

These decisions are conclusive against the plaintiff. The acts of the defendants here complained of do not violate the Shipping Commissioner's Act.

DO THE ACTS OF THE DEFENDANTS VIOLATE THE SHERMAN OR CLAYTON ANTI-TRUST ACTS?

The complaint alleges that the defendants herein have combined to restrain the freedom of plaintiff and all other seamen engaging in interstate commerce.

The means employed by the defendants have already been briefly set forth. Defendants own or control nearly all vessels sailing from ports on the Pacific Coast. They maintain employment offices

at which almost all of the seamen in the commerce aforesaid are employed. As a condition of being employed, "the defendants compel all seamen seeking employment to register and take a number and take his turn for such employment according to such number".

Is this a restraint of interstate commerce?

The Authority of Congress Under the Commerce Clause of the Constitution is Limited to the Regulation of Commerce.

The Sherman and the Clayton Anti-Trust Acts were enacted by Congress under the powers granted to it by Sub. 3, Sec. 8, Art. I of the Constitution of the United States, which provides that Congress shall have power "to regulate Commerce with foreign Nations and among the several States and with the Indian Tribes". It is of the utmost importance, therefore, that it be borne in mind that under this section the regulatory powers of Congress are confined to *commerce.*

The Sherman and Clayton Acts.

Congress, pursuant to the powers given it by the Constitution, has enacted the Sherman and the Clayton Acts. (Act July 2, 1890, Ch. 647, 26 Stat. L. 209.) (Act Oct. 15, 1914, Ch. 323, 38 Stat. L. 730.) (9 Fed. Stat. Ann. 2nd Ed. pp. 644 and 730.)

The only part of these acts necessary to consider at this time is Section 1 of the Sherman Act which provides:

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among several states or with foreign nations is hereby declared to be illegal."

Only Direct Restraints of Interstate Commerce Violate the Anti-Trust Laws.

Restraints upon commerce which are not direct, proximate, and immediate, but which are merely indirect, incidental, secondary and remote, do not violate the anti-trust laws. If a restraint upon *something other than commerce* affects commerce indirectly or incidentally, such restraint is not a violation of the anti-trust laws unless the acts are done with the intent to restrain interstate commerce.

These propositions have been established beyond question by the decisions of the Supreme Court of the United States.

Cases Involving Indirect Restraints Upon Commerce.

The case of *United States v. E. C. Knight,* 156 U. S. 1, involved a combination with respect to the production of sugar. There the Court held that a restraint upon *manufacture* was not a restraint of *commerce,* saying:

> "the fact * * * that trade or commerce might be indirectly affected was not enough to entitle complainants to a decree".

The Supreme Court has frequently reiterated this principle. In the case of *United Mine Workers v. Coronado Coal Co.* (259 U. S. 344), the owner of a coal mine attempted to operate it as a non-union mine. Union miners by unlawful and violent means prevented the operation of the mine and the consequent shipping into interstate commerce of five thousand tons of coal a week. But the Court held that a restraint upon *coal mining, as such,* was not a re-

straint upon interstate *commerce* and that the acts of the defendants were not shown to have been done with the *intent* to restrain such commerce. Therefore these acts did not violate the anti-trust laws.

In the recent case of *United Leather Workers v. Herkert & Meisel Trunk Co.*, 265 U. S. 457, the defendants were strikers who by unlawful means interfered with the operation of the plaintiff's factory. Plaintiff received its materials and sold its products in interstate commerce. Here, too, the Court held that there was no violation of the Act for the reason that *manufacture* was not *commerce* and that the interference with manufacture by the defendants was not shown to have been with the *intent* to restrain interstate commerce.

Still more recently in the case of *Industrial Association of San Francisco, et al. v. U. S.*, 268 U. S. 64, this Court held that a combination of building material dealers in San Francisco refusing to sell locally produced materials for use on union building jobs in San Francisco, was not a restraint of interstate commerce. It was contended that the refusal to sell local materials prevented the erection of buildings which would require in their construction goods coming into the state from other states and that consequently this resulted in a restraint of interstate commerce. But the Court said that if by a resulting diminution of the commercial demand interstate trade was curtailed that was a fortuitous consequence so remote and indirect as plainly to cause it to fall outside the reach of the Sherman Act.

Principle Established by These Decisions.

In each of these cases the restraint upon production or upon consumption necessarily and inevitably affected interstate commerce at some time and in some degree at least. Yet in every case the restraint was held not to be in violation of the Sherman Act. *The reason was that the restraint upon commerce was not a direct restraint but was merely secondary and incidental.* Because the intent of the parties was directed at *something other than commerce* any restraint which their acts imposed upon interstate commerce was not one contemplated by the Act.

Further Cases Involving Indirect Restraints of Commerce.

Another class of cases to the same effect as those last cited and still more forcibly demonstrating this principle because of the fact that the activities of the defendants directly involved interstate commerce, is the class of cases including *Hopkins v. United States* (171 U. S. 578); *Anderson v. United States* (171 U. S. 604) and *Board of Trade of Chicago v. United States* (246 U. S. 231).

A case involving regulations infinitely more severe than those involved in the present suit is *National Assn. of Window Glass Mfrs. v. U. S.* (263 U. S. 403.)

A further case in point, decided not under the Sherman Act but under the Commerce Clause of the Constitution is *Adair v. U. S.* (208 U. S. 161). In that case the Supreme Court held that Congress, under its power to regulate interstate commerce, did not have the right to pass a law prohibiting any interstate car-

rier from discharging an employee because of membership in a labor organization. There the Court said,

> "Manifestly, any rule prescribed for the conduct of interstate commerce, in order to be within the competency of Congress under its power to regulate commerce among the states, must have some real or substantial relation to or connection with the commerce regulated. *But what possible legal or logical connection is there between an employee's membership in a labor organization and the carrying on of interstate commerce?* Such relation to a labor organization cannot have, *in itself* and in the eye of the law, any bearing upon the commerce with which the employee is connected by his labor and services * * *." (Italics are ours.)

With equal force we may inquire what possible connection is there between interstate commerce and the requirement of the defendants that applicants take turns for employment according to numbers?

If the discharge of employees of interstate carriers because of affiliations with labor organizations was not sufficiently connected with commerce to authorize Congress, under the Commerce Clause of the Constitution, to legislate respecting the same, certainly the requirement that applicants for employment upon the defendants' ships shall take turns for employment according to numbers is not sufficiently connected with commerce to bring it within the scope of the Sherman Anti-Trust Act.

Application of Decisions to the Present Case.

The principle of these decisions governs this case. A combination of shipowners is alleged here. The shipowners are engaged in interstate commerce. The combination is alleged to have imposed a restraint. *The subject of this restraint is the employment of men.*

The employment of men is not commerce. Therefore a restraint upon the employment of men is not a direct restraint upon commerce. Any effect upon commerce resulting from such a combination or restraint is but secondary and indirect. As the intent of the parties is not to restrain commerce but to regulate employment, such restraint is not within the scope of the anti-trust laws.

Suppose it be contended that this combination prevents the plaintiff from engaging in interstate commerce? In the *Coronado* case (supra) the acts of the defendants prevented the plaintiff from mining and selling its coal in interstate commerce. So in the *Herkert & Meisel* case (supra) where the defendants prevented the manufacture of leather goods intended for sale interstate commerce and the consumption of materials shipped to the factory in interstate commerce. So also in the *Industrial Association* case (supra) where the refusals of local materials cut off the demand for goods shipped into the state in interstate commerce. These are merely indirect and secondary restraints upon commerce not contemplated by the Act.

Suppose it be contended that here the defendants themselves were engaged in interstate commerce? In the *Anderson* and the *Board of Trade* cases the parties there involved were engaged in interstate commerce. Buying and selling are commerce just as is transportation. But those cases are even stronger. The stock market itself in which the commission men and traders in the *Hopkins* and *Anderson* cases were engaged, and which they served to make up, was an instrumentality of commerce (*Swift & Co. v. U. S.*, 196 U. S. 375); (*Stafford v. Wallace*, 258 U. S. 495); as was the Grain Exchange in the *Board of Trade* case.

The effect of the acts of the defendants upon interstate commerce in the cases cited was merely indirect and incidental. So here the effect of the acts of these defendants upon interstate commerce is merely indirect and incidental.

Summary of Discussion.

We may summarize the discussion so far as follows:

1. ONLY DIRECT RESTRAINTS OF COMMERCE VIOLATE THE SHERMAN ANTI-TRUST ACT.

2. THE COMPLAINT ALLEGES A SHIPOWNERS' COMBINATION IMPOSING A RESTRAINT UPON THE EMPLOYMENT OF MEN.

3. THE EMPLOYMENT OF MEN IS NOT COMMERCE.

4. THERE BEING NO INTENT TO RESTRAIN COMMERCE, THE REGULATION OF THE EMPLOYMENT OF MEN IS NOT A VIOLATION OF THE ANTI-TRUST LAWS.

Or, to express the rule in another way:

A RESTRAINT UPON SOMETHING OTHER THAN COMMERCE WHICH INCIDENTLY OR INDIRECTLY AFFECTS COMMERCE IS NOT A VIOLATION OF THE SHERMAN ANTI-TRUST ACT.

Therefore the bill fails to set forth a cause of action.

Decisions of Lower Courts.

These principles have been applied to cases almost identical with the case at bar.

In *Street v. Shipowners Assn.*, before referred to, involving the same defendants imposing the same regulations as in this case the District Court expressed itself as follows:

> "Nor have I been able to apply to the facts of the case the anti-trust law. Though approaching its prohibitions the case as pleaded does not fall within their reach." (Transcript of Record U. S. Circuit Ct. of Appeals, Ninth Circuit, Case No. 4173, Trans. p. 15.)

A motion to dismiss the bill was sustained

The Circuit Court of Appeals affirmed the order dismissing the bill. (*Street v. Shipowners*, 299 Fed. 5.)

A case similar to the *Street* case and applying the same principles of law is *Tillbury, et al v. Oregon Stevedoring Co., et al.*, 7 Fed. (2d Series) 1. In that case suit was brought in the District Court for the District of Oregon by two longshoremen against a combination of persons and firms engaged in stevedoring and operating vessels sailing in interstate com-

merce. The defendants formed a waterfront employees association, established a hiring hall for longshoremen, adopted rules and regulations governing their employment and established a registration system whereby all longshoremen who applied for employment had their applications referred to a person having a list of names of men objectionable to respondents (which, it was alleged, was because of affiliations with labor organizations). If found satisfactory, they were employed; if rejected they were refused employment. The combination fixed uniform wages and no member would employ any longshoremen objected to by any other member. It was alleged that stevedoring in Portland was done almost exclusively by the defendants. Plaintiff Tillbury's application for work was denied. Plaintiff Marks was discharged. Suit was brought by them on behalf of all longshoremen similarly situated. Motions to dismiss were interposed by defendants.

The motions to dismiss the bill were sustained by the District Court (*Tillbury v. Oregon Stevedoring Co.*, Transcript of Record United States Circuit Court of Appeals, Ninth Circuit, Case No. 4542), the Court saying:

> "Not all monopolies are denounced by the anti-trust legislation of Congress. It is only such as are in restraint of interstate *traffic* or *commerce*, and it is this sort of combination that Congress has attempted to relieve * * *.
>
> "Nor are all agreements under which, as a result, the costs of conducting interstate commercial business may be increased, condemned by the anti-trust legislation. It is only where there

is some *direct* and *immediate* effect upon interstate commerce that monopolies are denounced."

* * * * * * *

"Now, to revert to the bill: By a review of the alleged manner and purposes of the organization of the Waterfront Employers Association, nothing appears to indicate that it was the intent and purpose of the promoters to stifle, hamper, or impede traffic, in any way, in interstate commerce. It would seem, on the other hand, that the organization is calculated rather to promote such traffic. *It is only where the interest of complainants as individuals touches the association that complaint is made of its maintenance and operation.*" (Italics are ours.)

The Circuit Court of Appeals affirmed the decree of the District Court dismissing the bill. (*Tillbury, et al. v. Oregon Stevedoring Co., et al.*, 7 Fed. (2d Series) 1.)

The opinion set forth the bill as in the decision of the District Court and proceeded as follows:

"We agree with the District Court in the view that the facts fail to show that commerce has in any way been impeded, or that the defendants had any purpose other than to regulate fairly the transaction of the business in which they are engaged. *The gravamen of the complaint is not that exchange or transfer or movement of goods has been impeded or interfered with, or that there has been any restriction upon the business of loading freight upon ships bound for ports in other states, but merely that certain persons have not been employed as longshoremen at Portland; and it is far from obvious that the consequences of the acts pleaded are or will be to restrain interstate commerce in the least.*" (Italics are ours.)

The Court then cited and quoted from the *Herkert* and *Meisel* case and the *Industrial Association* case already referred to, and added:

> "We conclude that it is in accord with reason, as well as the doctrine of the adjudged cases, to hold that an agreement among employers, whereby the hiring of men to work as longshoremen is governed by rules such as obtained in the association complained of, with respect to their qualifications and wages, is in no respect violative of the Acts of Congress."

In this case (*Anderson v. Shipowners Assn.*, 10 Fed. (2nd) 96) the Circuit Court of Appeals decided that the present regulations did not violate the anti-trust laws saying:

> "It is not alleged that the purpose of the practice complained of is the restraint of interstate or foreign commerce. It is contended that less capable men are employed on vessels than would be employed if the officers of the vessels looked after the employment of seamen. This result is alleged to follow from defendants' practice of employing seamen in the order in which they apply for work. *This is at most an indirect and incidental impediment to the transaction of interstate commerce.* The conduct complained of falls without the inhibition of the Sherman Act, the Clayton Act and the federal anti-trust acts generally." (Italics are ours.)

It is futile to draw distinctions between the *Oregon Stevedoring* case and the case at bar. Whatever difference there may be in the facts of the two cases the principles of law governing them are the same.

The employment of men is not commerce. A restraint upon the employment of men is not a restraint upon commerce.

THE REGULATIONS ARE NOT SHOWN TO HAVE ANY EFFECT ON COMMERCE.

An additional consideration of the utmost importance is the fact that *the regulations here involved are not shown to have any effect whatever upon trade or commerce.*

Obviously, the regulations have nothing to do with the buying and selling of commodities. Their only connection with commerce is their effect upon transportation.

Transportation has not been shown to be affected in the slightest degree. There has been no effect upon the movement of ships, the carrying of passengers, or the transportation of freight.

The only change is a difference in the personnel of the crews. Transportation remains unaltered.

The complaint in this case fails to set forth a violation of the Sherman Anti-Trust Act.

DO THE ACTS OF THE DEFENDANTS CONSTITUTE AN UNLAWFUL RESTRAINT OF TRADE OR COMPETITION?

The final question presented by the motion to dismiss the bill of complaint is whether there is shown a right to relief upon any other grounds at common law or in equity.

The Bill of Complaint Does Not State a Case Within the Jurisdiction of the Federal Court.

At the outset arises the question of the jurisdiction of the Court. No cause of action has been set forth in the bill of complaint under the Constitution, the Shipping Commissioner's Act, the Anti-Trust laws or any other Federal statute. The jurisdiction of the Federal Court to enjoin a restraint of trade under the common law, or principles of equity must therefore be considered independently.

A diversity of citizenship is alleged, it is true. An alien may sue a citizen in the Federal Courts. (Jud. Code Ch. II, Sec. 42.)

Equally as important as the diversity of citizenship however is the amount in controversy. To give the Federal Court jurisdiction the matter in controversy, exclusive of interest and costs, must exceed the sum or value of $3,000.00. (Jud. Code Ch. II, Sec. 24.)

The only statements in the bill of complaint as to the amount in controversy, or as to any amount whatever, are the allegations that the plaintiff lost employment at wages of $75.00 per month, together with his board and lodging worth $60.00 per month, and that the plaintiff's loss by reason of the premises was in the sum of $135.00 for which sum plaintiff prays judgment as damages. Other than this, the bill is silent as to the sum or value of the matter in controversy.

If the jurisdiction of the Court is to rest upon the basis of the sum claimed as damages, the value of the matter in controversy set forth in the bill is totally inadequate.

There is *nothing elsewhere* in the bill which warrants adopting any other amount or value as a basis of jurisdiction. From the facts alleged the value of the matter in controversy, calculated upon any other or different basis, would be merely a matter of surmise and conjecture.

This is of course insufficient as the sum or value of the matter in controversy, being jurisdictional, must appear affirmatively in the bill.

El Paso Water Co. v. El Paso, 152 U. S. 157;
Pinel v. Pinel, 240 U. S. 594.

Plaintiff is not entitled to combine his claim with those of the ten thousand other seamen on whose behalf the suit is brought in order to make up the jurisdictional amount.

The interests of plaintiff and the other seamen on whose behalf he purports to sue are not joint but are entirely separate and distinct. They are joined merely for convenience, and to avoid a multiplicity of suits. In such a case the value of each separate interest must appear to be equal to the jurisdictional amount. They cannot be joined in order to make up this amount.

Wheless v. St. Louis, 180 U. S. 379;
Clay v. Field, 138 U. S. 464;
Pinel v. Pinel, 240 U. S. 594;
Henderson v. Carbondale Co., 140 U. S. 253;
Waite v. Santa Cruz, 184 U. S. 302.

Moreover, this suit is not a proper class suit. There is no community of interest between the plaintiff and the persons on behalf of whom he purports to sue.

Scott v. Donald, 165 U. S. 107.

Furthermore the bill of complaint is silent as to the extent of damage to any other seamen. The joining of their claims, if this were permissible, would not make up the jurisdictional amount.

Whatever the merits of the plaintiff's contentions may be, he has failed to state a case within the jurisdiction of the Federal Courts.

The Bill of Complaint Fails to Set Forth a Combination in Restraint of Trade, Illegal Either at Common Law or in Equity.

As stated, the substance of the complaint is that the defendant shipowners maintain joint employment offices thru which they employ all seamen. As a condition of employment the defendants require all applicants to register, take a number and take turns for employment according to number.

Is this illegal?

This Case is Not One of the Recognized Classes of Restraints of Trade at Common Law.

At the outset we quote the language of the opinion of the District Court in the case of *Street v. Shipowners,* heretofore so frequently referred to:

> "So far as I am advised the suit is without precedent and I have been unable to formulate any theory upon which the complaint can be sustained."

The agreement in question is not a recognized restraint of trade at common law.

Restraints of trade which were illegal at common law were originally grouped into two classes:

1. Contracts whereby a person restrained himself from carrying on a trade or calling.

2. Monopolies.

Subsequently a third class of restraints was declared illegal.

3. Contracts to suppress or diminish competition.

(See *Standard Oil v. U. S.*, 221 U. S. 1.)

The agreement in question falls within none of these recognized classifications.

By the agreement no one disables himself from engaging in a trade or calling. No one of the shipowners has agreed not to engage in the business of shipping.

Neither is the agreement one to monopolize. The fact that all shipowners on the Pacific Coast are parties to it does not constitute the agreement a monopoly. A combination of competitors is only illegal when its purpose is to destroy competition. Here the combining parties compete against each other.

Nor is the agreement one to suppress or diminish competition. The parties to the agreement are avowedly competitors. They strive against one another in the business of shipping. The agreement in no way affects this competition of the several shipowners against each other.

The agreement is therefore not one of the recognized classes of restraints of trade at common law.

This is not to say, however, that the agreement may not be illegal merely because it does not fall within one of the enumerated Classifications.

If the Court determines that a contract is wrongful or against public policy, it may refuse to enforce it, or in proper cases, restrain its performance. This is within the inherent powers of the Court.

An examination of the principles of the decisions of this Court clearly shows, however, that the agreement in question is not contrary to the policy of the law.

Reasonable Restraints of Trade Are Not Illegal.

An agreement or regulation is not unlawful merely because it imposes a restraint upon trade or competition. In order to be illegal the regulations must impose an undue or unreasonable restraint. Reasonable restraints of trade or competition are legal.

An apt illustration of the doctrine is the case of *Board of Trade of Chicago v. U. S.*, 246 U. S. 231.

In that case all the members of the Board of Trade, by a rule of the Board, were prohibited from purchasing "grain to arrive" during the period between the close of the Call on one day and the opening of the Session on the following day at any price other than the closing bid at the call.

This rule fixed prices during a substantial part of the business day and restrained members of the Board from trading at any other price.

The lower Court enjoined the members of the Board from enforcing and carrying out the rule.

Upon appeal to the Supreme Court of the United States the decree was reversed, the Supreme Court saying:

> "But the legality of an agreement or regulation cannot be determined by so simple a test as whether it restrains competition. Every agreement concerning trade, every regulation of trade, restrains. To bind, to restrain, is of their very essence. The true test of legality is whether the restraint imposed is such as *merely regulates* and perhaps thereby promotes competition, or whether it is such as may *suppress* or even *destroy competition.*" (Italics are ours.)

The Court then declared that the circumstances of the case must be examined and the purpose, the nature, the scope and the effect of the rule ascertained.

It was found that the restraint in question was not detrimental but beneficial.

This decision is an application of the famous "Rule of Reason" announced in the *Standard Oil* case, in which this Court declared that not every restraint of trade was illegal but only those restraints which were undue and unreasonable.

Standard Oil v. U. S., 221 U. S. 1.

A further application of this doctrine is the decision of this Court in *National Association of Window Glass Manufacturers v. U. S.,* 263 U. S. 403.

That case involved an agreement between the manufacturers of hand blown glass and an association of glass blowers whereby a wage scale was established

and it was agreed that the men should work alternately for one set of manufacturers and then the other, during which time the factories in which the men did not work remained idle.

It was found that the price of glass was fixed by the machine made product and that the agreement between the hand workers and their employers did not affect this price.

As there were not men enough to operate both sets of hand blown glass factories, which cost as much to operate when they were undermanned as when fully manned, and because the agreement gave the men continuous employment, without which agreement they were less well off, it was held that the agreement was not an unreasonable restraint of trade.

Under these decisions, therefore, if the present agreement imposes merely a reasonable restraint it is legal.

The Present Agreement.

No formal agreement between the defendants is set forth.

The allegations of the bill of complaint are as follows:

> "That on or about the 1st day of January, 1922, the defendants herein associated and combined together to restrain the freedom of plaintiff and all other seamen * * * and to that end they established and now maintain offices in San Francisco and San Pedro in the State of California at which offices almost all seamen who are employed on vessels engaged in the trade

and commerce aforesaid are engaged and/or supplied by the defendants to the operators of such vessels so engaged in the trade and commerce aforesaid * * *. (Bill of Complaint, Par. VII.)

"That as a condition of being employed in such trade and commerce on vessels flying the American flag, the said defendants compel all seamen seeking such employment to register and take a number and take his turn for such employment according to such number, and no seaman can secure employment on the said Pacific Coast unless he takes such number and his turn for employment according to such number * * *. (Bill of Complaint, Par. VIII.)

"* * * under the system adopted by the defendants when a seaman's turn comes he must take the job the turn offers, * * * whether he wishes to engage on the particular vessel his turn calls for or not, *or lose his turn* * * *. (Bill of Complaint, Par. XVIII.) (Italics are ours.)

The foregoing allegations establish these facts:

1. That certain of the shipowners on the Pacific Coast have combined to maintain joint employment offices.

2. That these shipowners hire their men solely through these joint offices.

3. That they have established an employment office rule that applicants seeking employment will be offered employment in turn in the order of their application.

Under this system any one may apply for and obtain employment. There is no requirement that seamen must work exclusively for the defendants.

There is no discrimination for or against union men. There is no allegation that a shipowner is compelled to employ the seaman who is first on the waiting list, nor does the complaint allege that a seaman is compelled to accept employment with the first shipowner who desires to engage him.

Its Operation.

The allegations of the bill of complaint, then, merely set forth an ordinary employment office conducted according to ordinary employment office rules.

An applicant desiring employment registers with the office and awaits his turn. He reaches the head of the waiting list. An employer notifies the office that he desires to employ a man. The employment is *offered* to the applicant. He is not *compelled* to take it. He may take it if he likes it or refuse it and await the next offer. The employer, likewise, is not *compelled* to accept the applicant. He may reject him and request that another man be furnished. Jobs are not "ground out" automatically in the employment office. Employers and employees are not brought together like the meshing of gear teeth. The employment must be agreeable to both parties. It is not compulsory on either.

The Complaint.

This is not the complaint. The complaint is that a seaman cannot go directly to a mate or other officer on a ship and immediately secure employment. The shipowners require him to apply at their employ-

ment office and await his turn for employment, together with other seamen.

The bill of complaint asserts that this is illegal.

Legality of the Agreement.

The agreement may best be considered by dividing it up into its several parts.

First—The agreement between the shipowners to maintain joint employment offices is not in and of itself unlawful nor has it any sinister purpose. The intent in establishing joint employment offices is to obtain the benefits of cooperation. It eliminates duplication. It removes uncertainties and the waste and losses resulting therefrom. If jobs are to be had on any ship in the vicinity, the men can be assured of obtaining them through the central employment offices. If any men are available, the employers are likewise assured of obtaining them at the joint employment offices.

Second—The rule requiring all men to obtain employment at the joint employment offices is a most reasonable one and is necessary to insure their successful operation. If the shipowners were to hire their men at their own offices or at the ship's side, no one would apply at the joint employment offices for employment and they would soon cease to exist through disuse. But if, indeed, some men were hired at the central offices and others at other places, so that two men might be employed for the same job, hopeless confusion would result, and the benefits derived from having central employment offices would be lost.

Third—The rule requiring the seamen to take employment in the order of their application is the most logical, most fair, and obviously the most practical rule to be applied to an employment office.

"First come, first served." It is the fairest to the men and insures the satisfaction of the greatest number. Employment is no longer a matter of chance. There are no favorites.

It may be that such a rule will prevent certain seamen from immediately securing re-employment ahead of others who have been waiting for a job but opposed to this is the infinitely fairer result that one man has as good a chance as the other. It does not give one man steady employment while another waits idly by but on the contrary tends toward regular employment of all of the men. It is conducive to a greater number of applicants for work and assures a more constant supply of labor.

Subject merely to the reasonable requirement that the men be employed in the order of their application supply and demand operate freely. The terms of the employment are in no way affected by the rule. The ability and experience of the man and the desirability of the particular job, operate as before in determining whether a contract of employment will be entered into.

This is certainly not unlawful. No legal wrong is done to any one. Shipowners have a right to prescribe reasonable regulations for the employment of men and if it be that one man no longer has continuous employment while others wait, the answer is

that so long as the regulation producing this result is reasonable it is *damnum absque injuria.*

The Effect.

For all that appears in the bill of complaint, the regulations have no effect whatever upon commerce. The same number of ships sail. The same number of passengers are carried. The same quantity of freight is transported. The same number of seamen are employed. The shipping service continues as before.

As for the men, there is no allegation that the regulations have resulted in the lowering of wages or in less advantageous terms of employment.

The only effect upon them is that they all have equal chances of securing employment instead of some men working continuously at the expense of others. The result is the greatest benefit to the greatest number.

Whatever harm may result to some of the men from these regulations is no legal injury.

NO DISCRIMINATION IS SHOWN.

Plaintiff alleges that he applied at the employment office, but was refused registration or employment. This, he contends, constitutes discrimination.

There is an utter failure to connect this refusal with any rule or agreement of defendants. Plaintiff may have been refused registration because there were already too many men on hand (as is suggested by paragraph XII of the bill of complaint). For all

that appears in the bill of complaint the plaintiff may have been refused registration for some other reason entirely unconnected with the agreement and regulation sought to be enjoined.

The refusal to accept plaintiff's application at the common employment office is no more illegal than a refusal to hire him by the captain or mate of each of the ships supplied through the office.

It is not connected with any wrongful agreement or conspiracy.

CONCLUSION.

The agreement, therefore, legitimate in its purpose, fair in its operation is but a reasonable regulation of the business of the defendants and does not constitute an unlawful restraint of trade or competition.

We refer, in closing, to the language of the Circuit Court of Appeals for the Ninth Circuit in the decision of *Street v. Shipowners* (299 Fed. 5).

> "There is no complaint that the regulations are unfair or discriminatory as between seamen seeking employment, or that directly or indirectly the acts of the defendants result in any discrimination against the plaintiff or those whom he claims to represent. *The whole complaint is that the seamen desiring such employment are required to register and take a number and take their turn for employment according to such number. This regulation seems to be fair and reasonable and in the interests of a square deal.* A similar system obtains in one form or another in many public or semi-public activities. In elections provisions for registration of voters are made in many, if not all the states, for the pur-

pose of requiring persons who are electors, and who desire to vote to show that they have the necessary qualifications by requiring registration as a condition precedent to the right of such electors to exercise the privilege of voting. Bergevin v. Curtz, 127 Cal. 86, 88. We are not aware that any Court has held that any citizen has suffered a justiciable injury by reason of such a regulation, nor are we aware that taking turn at a post-office or theatre window, or in a breadline where food is being distributed to men, women, and children requiring such relief, has been held a just cause of complaint.

"Plaintiff insists, however, that the regulation is un-American. We think, on the contrary, that it is peculiarly American and well adapted for the regulation of the business of shipping seamen."

Dated, San Francisco,
October 4, 1926.

Respectfully submitted,

FREDERICK CLAYTON PETERSON,
Attorney for Respondents.

CHAUNCEY F. ELDRIDGE,
GEORGE O. BAHRS,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

No. 306.—October Term, 1926.

Cornelius Anderson, suing on behalf of himself and all other seamen, etc., Petitioner,
vs.
Shipowners Association of the Pacific Coast, Pacific American Steamship Association, their members, etc., et al.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[November 22, 1926.]

Mr. Justice Sutherland delivered the opinion of the Court.

This is a suit to enjoin the respondents from maintaining a combination in restraint of interstate and foreign commerce in violation of § 1 of the Anti-Trust Act, c. 647, 26 Stat. 209, and to recover damages. Such a suit is authorized by §§ 4 and 16 of the Clayton Act, c. 323, 38 Stat. 730, 731, 737. *Duplex Co.* v. *Deering*, 254 U. S. 443, 464-465. Upon respondents' motion, the district court dismissed the bill of complaint, apparently upon the merits, and the circuit court of appeals affirmed the decree. 10 F. (2d) 96. The only question necessary to be considered here is whether the bill states a case within the Anti-Trust Act.

The bill is not concisely drawn and the application of its allegations is to some degree obscured by references to acts of Congress regulating commerce, other than the Anti-Trust Act. For present purposes the pertinent allegations, shortly stated, are as follows: Petitioner is a seaman and has followed that calling for more than twenty years on ships engaged in the carrying trade among the states on the Pacific Coast and with foreign countries. He is a member of the Seaman's Union of America, having a membership of about 10,000 seamen engaged in various forms of maritime service in the same field; and he sues on their behalf as well

as his own. The members of the respondent associations own, operate or control substantially all the merchant vessels of American registry engaged in interstate and foreign commerce among the ports of the Pacific Coast and with foreign countries. These associations and their members have entered into a combination to control the employment, upon such vessels, of all seamen upon the Pacific Coast, and to that end the associations have established and maintain offices in San Francisco and San Pedro, California, where seamen are engaged and supplied to the operators of the vessels. Among other requirements, every seaman seeking employment is compelled to register, receive a number and await his turn according to the number, before he can obtain employment, the result of which is that seamen, well qualified and well known, are frequently prevented from obtaining employment at once, when, but for these conditions, they would be able to do so. A certificate is issued to each seaman which he is obliged to carry and present in order to obtain employment. The certificate, in part, recites that no person will be employed unless registered; that the certificate must be delivered to the master of the vessel upon articles being signed; that the certificate is the personal record of the seaman and the basis of his future employment. At the same time, two cards are issued,—one to the seaman, assigning him to a specified employment, and another to the ship, reciting the capacity in which the seaman is to be employed, with the statement that "he must not be employed on your ship in any capacity unless he presents an assignment card, grey in color, issued by us and addressed to your vessel designating the position to which we have assigned him." The associations fix the wages which shall be paid the seamen. Under the regulations, when a seaman's turn comes, he must take the employment then offered or none, whether it is suited to his qualifications or whether he wishes to engage on the particular vessel or for the particular voyage; and the officers of the vessels are deprived of the right to select their own men or those deemed most suitable. Without a compliance with the foregoing requirements, no seaman can be employed on any of the vessels owned or operated by members of the associations.

It is further alleged that the petitioner sought employment through the San Francisco office of the associations and was refused registration because he failed to produce a discharge book. At a later time, he was employed by the mate of a vessel engaged

in coastwise interstate traffic, but was required by the mate to apply at the office of the associations for assignment as a sailor; that upon application being thus made such assignment was refused; that, nevertheless, he was directed by the mate to report on board for duty; that he did report, but was informed by the mate that he had been ordered to take no seamen except through the office of the associations, and in consequence petitioner lost the employment to his damage in a sum stated.

From these averments, the conclusion results that each of the shipowners and operators, by entering into this combination, has, in respect of the employment of seamen, surrendered himself completely to the control of the associations. If the restraint thus imposed had related to the carriage of goods in interstate and foreign commerce—that is to say, if each shipowner had precluded himself from making any contract of transportation directly with the shipper and had put himself under an obligation to refuse to carry for any person without the previous approval of the associations—the unlawful restraint would be clear. But ships and those who operate them are instrumentalities of commerce and within the Commerce Clause no less than cargoes. *Second Employers' Liability Cases*, 223 U. S. 1, 47-49. And, as was said by this Court in *United States* v. *Colgate & Co.*, 250 U. S. 300, 307, "The purpose of the Sherman Act is to prohibit monopolies, contracts and combinations which probably would unduly interfere with the free exercise of their rights by those engaged, or who wish to engage, in trade and commerce —in a word to preserve the right of freedom to trade." That the effect of the combination now under consideration, both as to the seamen and the owners, is precisely what this language condemns, is made plain by the allegations of the bill which we have just summarized. The absence of an allegation that such was the specific intent is not important, since that is the necessary and direct consequence of the combination and the acts of the associations under it, and they cannot be heard to say the contrary. *United States* v. *Patten*, 226 U. S. 525, 543. It is not important, therefore, to inquire whether, as contended by respondents, the object of the combination was merely to regulate the employment of men and not to restrain commerce. A restraint of interstate commerce cannot be justified by the fact that the object of the participants in the combination was to benefit themselves in a way which might have been unobjectionable in the absence of such restraint. *Duplex*

Co. v. *Deering, supra,* p. 468; *Ellis* v. *Inman, Poulsen & Co.,* 131 Fed. 182, 186.

Respondents rely on *Industrial Association* v. *United States,* 268 U. S. 64; *United Leather Workers* v. *Herkert,* 265 U. S. 457, and *United Mine Workers* v. *Coronado Co.,* 259 U. S. 344; but these cases are not in point. The conspiracies or combinations in all three related to local matters—the first, to building in San Francisco, the second, to manufacturing, and the third, to mining operations—and the effect upon interstate commerce was held to be purely indirect and secondary. Neither the making of goods nor the mining of coal is commerce; and the fact that the things produced are afterwards shipped or used in interstate commerce does not make their production a part of it. Nor is building commerce; and the fact that the materials to be used are shipped in from other states does not make building a part of such interstate commerce. In the *Industrial Association* case, after a reference to the two earlier decisions, pp. 80-82, it was said (p. 82): "The alleged conspiracy and the acts here complained of, spent their intended and direct force upon a local situation,—for building is as essentially local as mining, manufacturing or growing crops,—and if, by a resulting diminution of the commercial demand, interstate trade was curtailed either generally or in specific instances, that was a fortuitous consequence so remote and indirect as plainly to cause it to fall outside the reach of the Sherman Act." Here, however, the combination and the acts complained of did not spend their intended and direct force upon a local situation. On the contrary, they related to the employment of seamen for service on ships, both of them instrumentalities of, and intended to be used in, interstate and foreign commerce; and the immediate force of the combination, both in purpose and execution, was directed toward affecting such commerce. The interference with commerce, therefore, was direct and primary, and not, as in the cases cited, incidental, indirect and secondary.

Taking the allegations of the bill at their face value, as we must do in the absence of countervailing facts or explanations, it appears that each shipowner and operator in this widespread combination has surrendered his freedom of action in the matter of employing seamen and agreed to abide by the will of the associations. Such is the fair interpretation of the combination and of the various requirements under it, and this is borne out by the

actual experience of the petitioner in his efforts to secure employment. These shipowners and operators having thus put themselves into a situation of restraint upon their freedom to carry on interstate and foreign commerce according to their own choice and discretion, it follows, as the case now stands, that the combination is in violation of the Anti-Trust Act.

Decree reversed and cause remanded to the district court for further proceedings in conformity with this opinion.

Mr. Justice STONE took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.